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# Delaware Register of Regulations

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Issue Date: August 1, 2006

Volume 10 - Issue 2 Pages 201 - 379

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## IN THIS ISSUE:

### Regulations:

- Errata
- Proposed
- Final

### Governor:

- Executive Orders
- Appointments
- General Notices
- Calendar of Events & Hearing Notices



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, 2006.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

9 **DE Reg.** 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

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## 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.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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.

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

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

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

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

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

| ISSUE DATE  | CLOSING DATE | CLOSING TIME |
|-------------|--------------|--------------|
| August 1    | July 17      | 4:30 p.m.    |
| September 1 | August 15    | 4:30 p.m.    |
| October 1   | September 15 | 4:30 p.m.    |
| November 1  | October 16   | 4:30 p.m.    |
| December 1  | November 15  | 4:30 p.m.    |

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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**DEPARTMENT OF EDUCATION  
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))  
14 **DE Admin. Code** 1526

**PUBLIC NOTICE****Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)****1526 Standard Certificate English to Speakers of Other Languages**

**\* Please Note:** Regulation 1526, previously published in the July *Register*, contained editing errors, the corrections to which are published herein.

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1526 Standard Certificate English to Speakers of Other Languages. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute. The passage of PRAXIS™ II, a test of content knowledge, is now required, where applicable and available, in addition to academic preparation for the issuance of a Standard Certificate. Definitions were added, and course requirements were revised to reflect current practice in the Education of English Language Learners.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

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

regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

### **1526 Standard Certificate English to Speakers of Other Languages (ESOL) Teachers**

#### **1.0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for English to Speakers of Other Languages Teachers (required for grades K to 12).

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

#### **2.0 Definitions**

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

**“Certification”** means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

**“Department”** means the Delaware Department of Education.

**“Educator”** means a person licensed and certified by the State under 14 **Del.C.** §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.

**“Examination of Content Knowledge”** means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

**“Fifteen (15) Credits or Their Equivalent in Professional Development”** means college credits or an equivalent number of hours, with one (1) credit equating fifteen (15) hours, taken either as part of a degree program or in addition to it, from a regionally accredited college or university of a professional development provided approved by the employing school district or charter school.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.

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

**“Major or Its Equivalent”** means a minimum of thirty (30) semester hours of course work in a particular content area.

**“NASDTEC”** means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

**“NCATE”** means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

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

**“Standards Board”** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

**“State Board”** means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

**“Valid and Current License or Certificate from Another State”** means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

### 3.0 Standard Certificate

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

3.1 Bachelor's degree from an regionally accredited college or university and,

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in English to Speakers of Other Languages Teacher (ESOL) or,

3.2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Elementary Language Arts, or English, or Foreign Languages; Identifying and Treating Exceptionalities; Effective Teaching Strategies, Multicultural Education, and student teaching, and,

3.3 Specific Teaching Field

3.3.1 Major in English to Speakers of Other Languages (ESOL) or,

3.3.2 Completion of an approved teacher education program in English to Speaks of Other Languages (ESOL), or,

3.3.3 Completion of an approved teacher education program in English, Foreign Language, or Elementary Education, with specific courses in: Second Language Acquisition or Psycholinguistics, 3 semester hours, Methods of Teaching English as a Second Language, or English as a Second Dialect, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies or Multicultural Education, 3 semester hours, and

3.3.4 Successful completion of the intermediate level of a foreign language. This requirement may be satisfied by a Department of Education approved proficiency test.

### 4.0 Effective Date

This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Teacher of English to Speakers of Other Languages after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

### 4.0 Multiple Certificates

Educators may hold certificates in more than one area.

### 5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

5.2 Official scores on the Praxis II examination if applicable and available; or

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5.4 An official copy of the out of state license or certification, if applicable.

5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

**6.0 Application Procedures for License Holders**

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

**7.0 Effect of Regulation**

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

**8.0 Validity of a Standard Certificate**

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

**9.0 Secretary of Education Review**

The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))  
14 DE Admin. Code 1570

**PUBLIC NOTICE**

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

**1570 Standard Certificate Early Childhood Teacher Special Education**

**\* Please Note:** Regulation 1570, previously published in the July *Register*, contained editing errors, the corrections to which are published herein.

- A. Type of Regulatory Action Requested**  
Amendment to Existing Regulation

**B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1570 Standard Certificate Early Childhood Teacher Special Education. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute. The passage of PRAXIS™ II, a test of content knowledge, is now required, where applicable and available, in addition to academic preparation, for the issuance of a Standard Certificate. That requirement, in addition to a revised definition of “educator”, has been added to the regulation. The grade configuration of the certificate has been changed to revise the age range of the children served, and to align it with the Standard Certificate for Early Care and Education for general education for children. Applicants who possess no prior course work or professional development in pedagogy must also fulfill 15 credits or equivalent professional development. Additional course work specific to special education is required for individuals who hold a degree in an area other than special education.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

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

**360 Certification Early Childhood Teacher Special Education**

Effective July 1, 1978

**1.0 Standard License**

The following shall be required for the Standard License for those teaching young children with disabilities (3 to 6 years of age) who are mildly and moderately disabled.

- 1.1 Bachelor's degree from an accredited college and,
- 1.2 Professional Education
  - 1.2.1 Completion of a program in Young Preschool Exceptional Children or,
  - 1.2.2 Completion of a teacher education program for Exceptional Children and,
    - 1.2.2.1 Three semester hours Preschool Programming for Exceptional Children
    - 1.2.2.2 Three semester hours Child Development (unless covered in program)
    - 1.2.2.3 Three semester hours Language Development (unless covered in program)
    - 1.2.2.4 Limited Standard License issued upon completion of a program for Exceptional Children with remaining courses listed above to be completed within three years or,
  - 1.2.3 Completion of a teacher education program in Early Childhood and,
    - 1.2.3.1 Three semester hours Introduction to Exceptional Children
    - 1.2.3.2 Three semester hours Preschool Program for Exceptional Children
    - 1.2.3.3 Three semester hours Language Development (unless covered in program)
    - 1.2.3.4 Limited Standard License issued upon completion of a program for Early Childhood with the remaining courses listed above to be completed within three years or,
  - 1.2.4 Completion of a teacher education program in Elementary Education and,
    - 1.2.4.1 Three semester hours Introduction to Exceptional Children
    - 1.2.4.2 Six semester hours Child Development (unless covered in program)
    - 1.2.4.3 Three semester hours Preschool Programming for Exceptional Children
    - 1.2.4.4 Three semester hours Assessment of Young Children or Educational Diagnosis of Exceptional Children
    - 1.2.4.5 Three semester hours Language Development (unless covered in program)
    - 1.2.4.6 Three semester hours Student Teaching Preschool Exceptional Children or internship in lieu of student teaching
    - 1.2.4.7 Limited Standard License issued upon completion of a program in Elementary Education and two of the courses listed above with the remaining courses to be completed within three years or,
  - 1.2.5 Completion of a teacher education program in Secondary Education and,
    - 1.2.5.1 Six semester hours Child Growth and Development
    - 1.2.5.2 Three semester hours Language Development
    - 1.2.5.3 Three semester hours Introduction to Exceptional Children
    - 1.2.5.4 Three semester hours Preschool Programming for Exceptional Children
    - 1.2.5.5 Three semester hours Assessment of Young Children or Educational Diagnosis of Exceptional Children
    - 1.2.5.6 Three semester hours Methods of Teaching Reading
    - 1.2.5.7 Three semester hours Methods of Teaching Mathematics
    - 1.2.5.8 Three semester hours Behavior Management
    - 1.2.5.9 Six semester hours Student Teaching Preschool Exceptional Children or internship in lieu of student teaching
    - 1.2.5.10 The Limited Standard License may be issued upon completion of a program in Secondary Education and four of the first six courses listed above with the remaining courses listed above to be completed within three years.

**2.0 Present Preschool Exceptional Children Teachers Protected**

2.1 Those teachers authorized to teach classes of preschool exceptional children prior to April 20, 1978 on the basis of a standard exceptional children teaching License and who have the recommendation of the local district superintendent shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License transferable to any other school district.

**3.0 Licenses that may be issued for this position include Standard and Limited Standard.****1570 Standard Certificate Early Childhood Teacher Special Education****1.0 Content**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Early Childhood Teacher Special Education (Birth to Grade 2).

**2.0 Definitions**

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

**“Certification”** means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

**“Department”** means the Delaware Department of Education.

**“Educator”** means a person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board approved by the State Board. The term ‘educator’ does not include substitute teachers.

**“Examination of Content Knowledge”** means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

**“Fifteen (15) Credits or Their Equivalent in Professional Development”** means college credits or an equivalent number of hours, with one (1) credit equating fifteen (15) hours, taken either as part of a degree program or in addition to it, from a regionally accredited college or university of a professional development provided approved by the employing school district or charter school.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.

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

**“Major or Its Equivalent”** means a minimum of thirty (30) semester hours of course work in a particular content area.

**“NASDTEC”** means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

**“NCATE”** means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

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

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del.C.

§1201.

“State Board” means the State Board of Education of the State pursuant to 14 Del.C. §104.

“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

### **3.0 Standard Certificate**

The Department shall issue a Standard Certificate as a Early Childhood Teacher Special Education to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Early Childhood Special Education; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor’s degree from a regionally accredited college or university in any content area and for applicants applying after September 11, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.1.5 A minimum of fifteen (15) graduate in early childhood special education from a regionally accredited college or university, as more specifically set forth in 3.1.5.1 through 3.1.5.5. With approval of a Committee comprised of the candidate’s principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.

3.1.5.1 Atypical Infants and Toddlers;

3.1.5.2 Emergent Literacy in Reading and Writing;

3.1.5.3 Assessment of Young Children;

3.1.5.4 Differentiated Instruction for Young Children; and

3.1.5.5 Consultation or Working with Families; and

3.2 For applicants applying after December 31, 2005, where a PRAXIS™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Early Childhood Special Education;

3.3.1 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation’s resolution; or

3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C §1203.

### **4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

**5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

- 5.1 Official transcripts; and
- 5.2 Official scores on the Praxis II examination if applicable and available; or
- 5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or
- 5.4 An official copy of the out of state license or certification, if applicable.
- 5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

**6.0 Application Procedures for License Holders**

If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.

**7.0 Effect of Regulation**

This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.

**8.0 Present Preschool Exceptional Children Teachers Protected**

Those teachers authorized to teach classes of preschool exceptional children prior to April 20, 1978 on the basis of a standard exceptional children teaching License and who have the recommendation of the local district superintendent shall be authorized to continue in such a teaching assignment in the district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License transferable to any other school district.

**9.0 Validity of a Standard Certificate**

A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

**10.0 Secretary of Education Review**

The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

**Symbol Key**

Arial 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.

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)  
3 **DE Admin. Code** 501

**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change DHRC Rules 2 and 8. The Commission will hold a public hearing on the proposed rule changes on August 15, 2006. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The proposed rule changes are as follows:

**501 Harness Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**2.0 Commission**

## 2.1 Purpose

2.1.1 The Delaware Harness Racing Commission, created by the Act, Title 4, Chapter 100, of the Delaware Code, is charged with implementing, administering and enforcing the Act. It is the intent of the Commission that the rules of the Commission be interpreted in the best interests of the public and the State of Delaware.

2.1.2 Through these Rules, the Commission intends to implement its statutory mandate to promulgate and prescribe such rules and regulations as are necessary and proper for the purpose of regulating and overseeing the sport of harness racing, as defined in the Act, within the State of Delaware in the public interest, including the regulation of the conduct of all grooms, drivers and owners and their employees, and the regulation of all harness racing horses entered or to be entered in any harness racing meet authorized by the Commission pursuant to the Act.

## 2.2 General Authority

# PROPOSED REGULATIONS

2.2.1 The Commission shall regulate each race meeting and the persons who participate in each race meeting.

2.2.2 Pursuant to the authority granted in the Act the Commission may delegate to the ~~State Steward and the judges~~ Board of Judges all powers and duties necessary to fully implement the purposes of the Act.

## 2.3 Membership And Meetings

2.3.1 The Commission consists of 5 members appointed as prescribed by the Act. No member of the Commission shall be licensed or regulated, directly or indirectly, by the Commission, nor shall any member of the Commission have any legal or beneficial interest, direct or indirect, pecuniary or otherwise, in any firm, association or corporation so licensed or regulated or which participates in pari-mutuel meetings in any manner. No member of the Commission shall be a person not of good moral character, nor shall a member of the Commission be a person convicted of, or under indictment for, a felony under the laws of Delaware or any other state, or the United States.

2.3.2 The Chairman of the Commission shall be elected by majority vote of the members of the Commission.

2.3.3 The Commission shall meet at the call of the Chairman or of a majority of the members. The Commission shall establish and maintain offices on each ~~a~~Association grounds, and at such other places as the Commission deems appropriate, and shall meet at least monthly during the period when any ~~a~~Association is conducting a harness horse racing meet, and at such other times as deemed necessary. Notice of the meetings must be given and the meetings must be conducted in accordance with the Freedom of Information Act, 29 **Del.C.** Ch. 100.

2.3.4 A majority of the Commission constitutes a quorum. When a quorum is present, a motion before the Commission is carried by an affirmative vote of the majority of the Commissioners present at the meeting.

2.3.5 To the extent required by 29 **Del.C.** Ch. 101 or by the Act, the Commission rules and orders shall be subject to the Administrative Procedures Act.

2.3.6 A Commission member may not act in the name of the Commission on any matter without a majority vote of a quorum of the Commission.

## 2.4 Annual Report

2.4.1 The Commission shall submit an annual report as prescribed by the Act.

## 2.5 Employees/Officials

2.5.1 The Commission may appoint ~~a State Steward and such other~~ officers, clerks, stenographers, inspectors and officials or employees as it deems necessary to implement, administer and enforce the Act. No person shall be appointed to or hold any such office or position who holds any official relation to any ~~a~~Association or corporation engaged in or conducting harness horse racing within the State of Delaware, or whose parent, child or sibling is so engaged during the meeting at which such person is so appointed. Regardless of who pays the salary of such officials or employees, the Commission shall determine and insure that such officials or employees perform their duties in the public interest.

2.5.2 ~~The Director of the Division of Poultry and Animal Health~~ Administrator of Harness Racing (Administrator) within the Department of Agriculture shall maintain the records of the Commission and shall perform other duties as required by the Commission. Except as otherwise provided by a rule of the Commission, if a rule of the Commission places a duty on the ~~Director of Poultry and Animal Health, the Director~~ Administrator of Harness Racing, the Administrator may delegate that duty to another employee of the Department of Agriculture or of the Commission. ~~The Commission may not employ or continue to employ, and the Director of Poultry and Animal Health may not delegate a Commission duty to, any person who:~~

2.5.2.1 ~~Owns a financial interest in an association in the State of Delaware;~~

2.5.2.2 ~~Accepts remuneration from an association in the State of Delaware;~~

2.5.2.3 ~~Is an owner, lessor or lessee of a horse that is entered in a race in the State of Delaware; or~~

2.5.2.4 ~~Accepts or is entitled to a part of the purse or purse supplement to be paid on a horse in a race held in the State of Delaware.~~

2.5.3 No Commissioner, racing official, ~~State Steward~~, judge or employee of the Commission whose duty it is to insure that the rules and regulations of the Commission are complied with shall wager in any pari-mutuel

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pool at any facility or through any pari-mutuel system subject to the jurisdiction of this Commission, or otherwise bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission.

2.6 Power of Entry

2.6.1 A member or employee of the Commission, ~~the State Steward~~ or a judge, a peace officer or a designee of such a person may enter any area on a Association grounds regulated by the Commission, or any other place of business of an Association regulated by the Commission, at any time to enforce or administer the Act or Commission rules, including the requirements set forth in Rule 4 of these Rules pertaining to Associations.

2.6.2 An Association or an officer, employee or agent of an Association may not hinder a person who is conducting an investigation under or attempting to enforce or administer the Act or Commission rules.

2.7 Subpoenas

2.7.1 A member of the Commission, the ~~Director of Poultry and Animal Health~~ Administrator of Harness Racing, the ~~State Steward~~ or judges, the Commission Investigator, the presiding officer of a Commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the reproduction of books, papers and documents. Subpoenas as authorized by such persons shall be issued in blank under the hand of any Commissioner and over the seal of the Commission to any party.

2.7.2 A member of the Commission, the ~~Director of Poultry and Animal Health~~ Administrator of Harness Racing, a presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.

2.7.3 If any person refuses to obey any subpoena requiring the person to appear, to testify, or to produce any books, papers and documents, the Commission may apply to the Superior Court of the county in which the Commission is sitting, and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify, or to produce the books, papers and documents.

2.8 Records

2.8.1 Except as otherwise provided by the Act, Commission records are subject to the Freedom of Information Act, Title 29, **Del.C.**, Ch. 100.

2.8.2 Except as otherwise authorized by statute, all original records of the Commission shall be maintained in the main offices of the Commission at the Department of Agriculture in Dover, Delaware. No person may remove an original record from the offices of the Commission without the approval of the ~~Director of Poultry and Animal Health~~ Administrator of Harness Racing.

2.8.3 To inspect Commission records, a person must make a written request to the Commission in conformity with 29 **Del.C.** Ch. 100, and must pay all costs including preparing or copying the record and postage, if applicable. The Commission shall determine the costs involved in preparing or copying the record as provided by the Freedom of Information Act.

2.9 Allocation of Race Dates and Permits

2.9.1 The Commission shall allocate race dates and permits to each Association in accordance with the Act. An Association shall apply to the Commission ~~not later than August 15 of each year~~ for race dates to be conducted in the next calendar year. The application must contain the information required by the Act and Commission licensing procedure. After the request is filed, the Commission may require the association to submit additional information.

2.10 Commission's Powers

The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health of horses in races in which they are to participate. The Commission is also authorized to promulgate administrative regulations for the legal drug testing of licensees. The Commission is authorized to contract for the maintenance and operation of a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests for enforcement of the Commission's drug testing rules and regulations. The licensed persons or Associations conducting harness racing shall reimburse the Commission for all costs of the drug testing programs established

pursuant to this section. Increases in costs of the aforementioned testing program shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. The Commission may not unreasonably expand the drug testing program beyond the scope of the program in effect as of June 30, 1998. Any decision by the Commission to expand the scope of the drug testing program that occurs after an administrative hearing, at which the persons or associations licensed under 3 Del.C. §10022 consent to such expansion, shall not be deemed an unreasonable expansion for purposes of this section. The Commission, in addition to the penalties contained in 3 Del.C. §10026, may impose penalties on licensees who violate the drug testing regulations including imposition of fines or assessments for drug testing costs.

*(Break in Continuity of Sections)*

## 8.0 Veterinary Practices, Equine Health Medication

### 8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

### 8.2 Veterinary Practices

#### 8.2.1 Veterinarians Under Authority of Commission Veterinarian

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the Commission Veterinarian and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the Commission Veterinarian may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

#### 8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the State Steward, judges and/or the Commission.

### 8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the

violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

#### 8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

##### 8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

##### 8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

- 8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;
- 8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- 8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- 8.3.1.2.4 Drugs with prominent CNS depressant action;
- 8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- 8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;
- 8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- 8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

##### 8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

- 8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- 8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- 8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

## PROPOSED REGULATIONS

- 8.3.1.3.4 Primary vasodilating/hypotensive agents; and
- 8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

### 8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- 8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;
- 8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects
  - 8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants
  - 8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics
  - 8.3.1.4.2.3 Drugs used to void the urinary bladder
  - 8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

- 8.3.1.4.4 Mineralocorticoid drugs;
- 8.3.1.4.5 Skeletal muscle relaxants;
- 8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

- 8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;
- 8.3.1.4.6.2 Corticosteroids (glucocorticoids); and
- 8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

- 8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;
- 8.3.1.4.8 Less potent diuretics;
- 8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:
  - 8.3.1.4.9.1 Cardiac glycosides;
  - 8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propanolol); and

- 8.3.1.4.9.3 Miscellaneous cardiotoxic drugs.

- 8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;
- 8.3.1.4.11 Antidiarrheal agents; and
- 8.3.1.4.12 Miscellaneous drugs including:
  - 8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;
  - 8.3.1.4.12.2 Stomachics; and
  - 8.3.1.4.12.3 Mucolytic agents.

### 8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

### 8.3.2 Penalty Recommendations

The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1 - in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.2 Class 2 - in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3 - in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4 - in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

8.3.2.5 Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Aggravating or mitigating circumstances in any case should be considered and greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;

8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited

from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.3.5 A finding by the official chemist that Erythropoietin (EPO) darbopoyetin (DPO) or their antibodies was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO, DPO or their antibodies. The judges shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO, DPO or their antibodies from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of this Rule, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be

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subject to application of trainer's responsibility based on the finding by the laboratory that EPO, DPO or their antibodies was present in the sample taken from that horse.

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Salix) and Aminocaproic Acid (Amicar)

8.3.5.1 General

Furosemide (Salix) and Aminocaproic Acid (Amicar)

may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Furosemide or Furosemide with Aminocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a pot-race urine sample.

8.3.5.2 Method of Administration

Furosemide or Furosemide with Aminocaproic Acid shall be administered intravenously by the licensed Bleeder Medication Veterinarian, unless he/she determines that a horse cannot receive an intravenous administration of Furosemide or Furosemide with Aminocaproic Acid. Permission for an intramuscular administration must be authorized by the Presiding Judge or his/her representative; provided, however, that once Furosemide or Furosemide with Aminocaproic Acid is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Aminocaproic Acid shall be administered to a horse on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 7.5 grams or less than 2.5 grams intravenously. Furosemide shall be administered to horses on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 Not more than 750 milligrams may be administered if (1) the Commission veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.2 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at their assigned stalls in the paddock for Aminocaproic Acid treatment. Aminocaproic Acid will be administered not more than 90 minutes (1 1/2 hours) and not less than 60 minutes (1 hour) prior to post time of their respective races and must be treated prior to going on the track the first time. Failure to meet this time frame will result in scratching the horse and the trainer may be fined. Horses must be presented at the Furosemide stall in the paddock, and the Furosemide administered, not more than three hours and 30

minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

#### 8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed Bleeder Medication veterinarian at the rate approved by the Commission. No credit shall be given without approval of the Bleeder Medication Veterinarian.

#### 8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide in oral form.

#### 8.3.5.7 Post-Race Quantification

The presence of Aminocaproic Acid in a horse following the running of the race in which it was not declared or reported, may result in the disqualification of the horse or other sanctions being imposed upon the trainer and the administering veterinarian.

Conversely, the absence of a bleeder medication following the running of a race, which was declared and reported may result in the disqualification of the horse and other sanctions being imposed upon the trainer and the bleeder Medication Veterinarian

##### 8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its

body at the time of the running of the race more than 100 nanograms of Furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Furosemide:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.1.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.2 or exceeded 500 milligrams as provided in 8.3.5.3.1, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

#### 8.3.5.8 Reports

8.3.5.8.1 The Bleeder Medication Veterinarian who administers Aminocaproic Acid or Furosemide or Furosemide with Aminocaproic Acid to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the Judges within one (1) hour of the last scheduled race for that day.

#### 8.3.5.9 Bleeder List

8.3.5.9.1 The Bleeder Medication Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and furosemide or Furosemide with Aminocaproic Acid, if applicable must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a ten (10) day rest period or having to reliquary provided the horse was on Aminocaproic Acid for thirty (34) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Furosemide and Aminocaproic Acid symbols in the program shall appropriately reflect that the horse did not receive Furosemide or Furosemide with Aminocaproic Acid its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 8.3.5.9.1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.5.9.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the Commission Veterinarian, will rule on any questions relating to the Bleeder List.

**8.3.5.10 Medication Program Entries**

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

**8.3.6 Phenylbutazone (Bute)****8.3.6.1 General**

**8.3.6.1.1** Phenylbutazone or oxyphenbutazone may be administered to horses in such dosage amount that the official test sample shall contain not more than 2.5 micrograms per milliliter of blood plasma.

**8.3.6.1.2** If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

**8.3.6.1.3** If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

**8.3.6.1.3.1** For an average between 2.6 and less than 5.0 micrograms per milliliter:

**8.3.6.1.3.1.1** If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

**8.3.6.1.3.1.2** If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

**8.3.6.1.3.1.3** If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

**8.3.6.1.3.1.4** For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

**8.3.6.1.4** If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclofenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

**8.4 Testing****8.4.1 Reporting to the Test Barn**

**8.4.1.1** Horses shall be selected for post-racing testing according to the following protocol:

**8.4.1.1.1** At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

**8.4.1.1.2** Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

**8.4.1.2** Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

**8.4.1.3** Unless otherwise directed by the State Steward, judges or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

**8.4.2 Sample Collection**

**8.4.2.1** Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

**8.4.2.2** The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

**8.4.3 Procedure for Taking Specimens**

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood sample receptacles will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in sample receptacles approved by the Commission, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

#### 8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise

provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other foreign substance that may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the Commission Veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the Commission Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

**8.6 Physical Inspection of Horses****8.6.1 Veterinarian's List**

8.6.1.1 The Commission Veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the Commission Veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

**8.6.2 Postmortem Examination**

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

**8.7 Prohibited Practices****8.7.1 The following conduct shall be prohibited for all licensees:**

8.7.1.1 The possession and/or use of a drug, substance, or medication, specified below for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the driver; or the use of which may adversely affect the integrity of racing.

8.7.1.2 The possession and/or use of a drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States

**8.8 Prohibited Substances Protests; Testing****8.8.1 Protest-Request for Super Test**

8.8.1.1 If a licensed owner, trainer, driver, or claimant has a reasonable belief that a competing or claimed horse has, or may have an unfair competitive advantage due to a violation of the Commission Rules, that owner, trainer, driver, or claimant may file a "Prohibited Substances Protest" with the Commission.

8.8.1.2 A "Prohibited Substances Protest" empowers the owner, trainer, driver, or claimant to request that any horse or horses he or she competes against or claims in a specified race have a blood and urine sample collected and then tested at an official Association of Racing Commissioners International (ARCI) approved laboratory of his or her choice. The designated laboratory shall employ state-of-the-art testing methods when testing these protested samples, which shall include, but not be limited to, Enzyme-Linked Immunosorbent Assay (ELISA), Thin Layer Chromatography (TLC), Gas Chromatography Mass Spectrometry (GCM-S), Liquid Chromatography Mass Spectrometry (LCMSMS), and Total Carbon Dioxide (TCO<sub>2</sub>) tests.

8.8.1.3 The owner, trainer, driver, or claimant must file a verbal protest with either the starter or paddock judge before the race has been made official. The starter or paddock judge must notify the Presiding Judge immediately, who shall order a veterinary assistant to escort and remain with the horse in accordance with established policy for obtaining a blood and urine sample. Within fifteen (15) minutes after the official sign has been posted for the race in which the protested horse competed, the protesting party shall file a written protest with the paddock judge and post a deposit of \$1,000 which shall be used to offset the following costs:

8.8.1.3.1 The collection of sufficient blood and urine samples, including the costs of the State veterinary assistant and State veterinarian and all necessary collection apparatus;

8.8.1.3.2 The packing of and transportation of these samples by bonded courier to the selected laboratory; and

8.8.1.3.3 All costs incurred by the state-of-the-art testing methods employed by the ARCI laboratory.

8.8.1.4 In the event the costs exceed the \$1,000 deposit, the protesting party shall be required to post additional monies to cover such costs.

8.8.1.5 The owner and/or trainer of the protested horse shall have the right to be present during the collection, packaging and shipping of these test samples.

8.8.1.6 Upon completion of all testing, the laboratory shall notify the Commission of the results. The Commission shall immediately notify the trainer of the protested horse as well as the protesting party of these test results.

8.8.1.7 If the test results substantiate a violation of the Commission rules in effect on the date of the race, the trainer of the tested horse shall be afforded the same rights every trainer receives when charged with any rules violation. This shall include the right to request a split sample test at a designated ARCI laboratory that has agreed to accept split samples from the Commission.

8.8.1.8 Penalties shall be assessed in accordance with the Commission penalty recommendations for a violation of the rules in effect on the date of the race. In no case, however, shall the penalty imposed for a medication violation be less than a \$500 fine. If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to any DHRC penalties, the horse shall immediately be placed on the Steward's List and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected. All testing must be performed by the DHRC official lab.

8.8.1.9 If the test results substantiate a violation of the Commission rules in effect on the date of the race, a successful claimant may void the claim in accordance with Commission Rules.

8.8.1.10 Any monies remaining from the protest deposit after costs shall be returned to the protesting party even if a violation of the Commission Rules is not detected. If a violation is detected, costs shall be assessed against the trainer of the protested horse and the Commission shall reimburse the protesting party upon receipt thereof.

8.8.1.11 The owner, trainer, driver, or claimant who files a Prohibited Substances Protest pursuant to this Section shall be immune from civil liability for filing the protest.

## 8.8.2 Routine Post Race Testing

8.8.2.1 Routine Post Race Testing shall include but not be limited to screening for antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.2 Any claimed horse not otherwise selected for testing by the racing officials shall be tested if requested by the claimant at the time the claim form is submitted in accordance with the Commission Rules.

8.8.2.3 The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, illegal level of a permitted medication, or presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.4 If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to assessing penalties in accordance with the DHRC rules, the horse shall immediately be placed on the steward's list and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected and said horse is removed from the Steward's List. All testing must be performed by the DHRC official lab.

8.8.3 This Rule enacts the provisions of 74 **Del. Laws** c. 236 (2004) which amended 28 **Del.C.** §706 in its entirety, and this Rule shall apply in the event these provisions conflict with or are otherwise inconsistent with any other Commission Rule.

## 8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the presiding judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 *Refusal-Failure* or refusal by a licensee to present a selected horse under his care, custody, or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 *Exercise Prior to Testing*-In the event that the horse has exercised prior to testing and the horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.9 *Post Race Testing*-The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.10 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.11 *Trainer Observation of Testing*-The trainer or other designated representative is permitted to observe the testing procedure, but not to question the technician or otherwise disrupt the testing.

8.9.12 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.13 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.14 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.14.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in Rules 8.3.2 and 8.3.3.3. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules.

8.9.14.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol.

8.9.14.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse, in order for a violation to be reported under this Rule.

A commission representative will notify the trainer or licensed designee and the primary blood sample of the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet. A second blood sample shall be extracted from the horse by the Commission Veterinarian.

8.9.14.2.2 With respect to a finding of a prohibited level of carbon dioxide in a ~~blood sample~~ the second extraction obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the "secondary sample extraction" by the licensee. ~~provided that a "secondary sample" shall be transported to the designated Commission laboratory on an anonymous basis for confirmatory testing.~~ In the event that the initial blood gas analyzer test result is confirmed by the test results of the ~~official Commission laboratory,~~ second extraction in the designated Commission testing area at the racetrack, such test results shall be *prima facie* evidence that ~~the prohibited drug~~ a prohibitive base excess concentration was present in the horse at the time it was scheduled to participate in a race and is *prima facie* evidence.

8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the presiding judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

8.10.2 Procedure: The owner or trainer will be responsible for providing the DHRC with a minimum check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

8.10.3 The quarantine of a horse is subject to the following mandatory requirements:

8.10.3.1 The owner or trainer will be required to deposit sufficient funds with the DHRC Presiding Judge to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

8.10.3.2 The expected period of the quarantine will be seventy-two hours.

8.10.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

8.10.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

8.10.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DHRC.

8.10.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DHRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DHRC designated official.

8.10.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DHRC designated official.

8.10.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

8.10.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

8.10.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

8.10.3.11 A sick horse must only be determined ill by the Commission Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

8.10.3.12 Stalls for the quarantine of horses are designated by the Presiding Judge of the DHRC, in cooperation with the racetrack.

8.10.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

8.10.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

8.10.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

8.10.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DHRC. The trainer may present such evidence at a hearing before the Judges if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

**1 DE Reg. 505 (11/01/97)**

**1 DE Reg. 923 (1/1/98)**

**3 DE Reg 1520 (5/1/00)**

**4 DE Reg. 6 (7/1/00)**

**4 DE Reg 336 (8/1/00)**

**5 DE Reg. 832 (10/1/01)**

**5 DE Reg. 1691 (3/1/02)**

**6 DE Reg. 862 (1/1/03)**

**7 DE Reg. 1512 (5/1/04)**

**8 DE Reg. 329 (8/1/04)**

**8 DE Reg. 698 (11/01/04)**

**8 DE Reg. 1108 (02/01/05)**

**9 DE Reg. 1066 (01/01/06)**

**9 DE Reg. 1367 (03/01/06)**

**9 DE Reg. 1951 (06/01/06)**

**\*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>.**

## PESTICIDES SECTION

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

**3 DE Admin. Code 601**

## PUBLIC NOTICE

The State of Delaware, Department of Agriculture, will hold a public hearing on September 5, 2006, 6 p.m., in Conference Room 1, Delaware Department of Agriculture building, 2320 S. Dupont Hwy., Dover, DE.

The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it relates to proposed amendments to the Pesticide Regulations under Title 3, **Delaware Code**, Chapter 12, Pesticide Law. The hearing will be conducted in accordance with Title 29, Chapter 101, Administrative Procedures Act.

Beginning at 6 p.m. comments will be received relating to: additional commercial pesticide application record keeping requirements, increased commercial applicator certification fees, and modifications to the pesticide storage and containment rules.

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Title 3, **Delaware Code**, Section 1237, provides the Department with the authority to issue regulations pursuant to this statute.

Interested parties may obtain a copy of the proposed amendments by calling the Department at 1-800-282-8685; by writing the Delaware Department of Agriculture, Pesticides Section, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the *Register of Regulations* site <http://regulations.delaware.gov/>.

### **601 Delaware Pesticide Rules and Regulations**

#### ***(Break in Continuity of Sections)***

### **8.0 Standards for Certification of Commercial Applicators**

#### **8.1 Determination Of Competency**

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

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

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

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

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

#### **8.2 General Standards For All Categories Of Certified Commercial Applicators**

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

##### **8.2.1.1 Label & Labeling Comprehension**

8.2.1.1.1 The general format and terminology of pesticide labels and labeling;

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

8.2.1.1.3 Classification of the product, general or restricted; and the necessity for use consistent with the label.

##### **8.2.1.2 Safety**

8.2.1.2.1 Pesticides toxicity and hazard to man and common exposure routes;

8.2.1.2.2 Common types and causes of pesticides accidents;

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

8.2.1.2.4 Need for and use of protective clothing and equipment;

8.2.1.2.5 Symptoms of pesticide poisoning;

8.2.1.2.6 First aid and other procedures to be followed in case of a pesticide accident; and

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

##### **8.2.1.3 Environment**

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

8.2.1.3.1.1 Weather and other climatic conditions;

- 8.2.1.3.1.2 Types of terrain, soil or other substrate;
- 8.2.1.3.1.3 Presence of fish, wildlife and other non-target organisms; and
- 8.2.1.3.1.4 Drainage patterns.
- 8.2.1.4 Pests
- 8.2.1.4.1 Factors such as:
- 8.2.1.4.1.1 Common features of pest organism and characteristics of damage needed for pest recognition;
- 8.2.1.4.1.2 Recognition of relevant pests; and
- 8.2.1.4.1.3 Pest development and biology as it may be relevant to problem identification and control.
- 8.2.1.5 Pesticides
- 8.2.1.5.1 Factors such as:
- 8.2.1.5.1.1 Types of pesticides;
- 8.2.1.5.1.2 Types of formulations;
- 8.2.1.5.1.3 Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
- 8.2.1.5.1.4 Hazards and residues associated with use;
- 8.2.1.5.1.5 Factors which influence effectiveness or lead to problems such as resistance to pesticides; and,
- 8.2.1.5.1.6 Dilution procedures.
- 8.2.1.6 Equipment
- 8.2.1.6.1 Factors including:
- 8.2.1.6.1.1 Types of equipment and advantages and limitations of each type; and
- 8.2.1.6.1.2 Uses, maintenance and calibration.
- 8.2.1.7 Application Techniques
- 8.2.1.7.1 Factors including:
- 8.2.1.7.1.1 Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;
- 8.2.1.7.1.2 Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
- 8.2.1.7.1.3 Prevention of drift and pesticide loss into the environment.
- 8.2.1.8 Laws and Regulations
- 8.2.1.8.1 Factors including:
- 8.2.1.8.1.1 Applicable State and Federal laws and regulations.

### 8.3 Specific Standards for Competency for Each Category of Commercial Applicators

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

#### 8.3.1 Agricultural Pest Control Category

##### 8.3.1.1 Agricultural Plant Pest Control Subcategory

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

##### 8.3.1.2 Agricultural Animal Pest Control Subcategory

8.3.1.2.1 Applicators applying pesticides directly to animals must demonstrate practical knowledge of animals and their associated pests. A practical knowledge is also required concerning specific

pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

8.3.1.3 Fumigation of Soil and Agricultural Products Subcategory

8.3.1.3.1 Applicators must demonstrate knowledge of application techniques appropriate to soil fumigation and agricultural product fumigation. This includes the use of personal protective clothing and equipment, and general safety procedures such as posting, reentry, aeration, and accident procedures.

8.3.2 Forest Pest Control Category

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

8.3.3 Ornamental and Turf Pest Control Category

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

8.3.4 Seed Treatment Category

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

8.3.5 Aquatic Pest Control Category

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

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

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

8.3.6 Right-of-way Pest Control Category

8.3.6.1 Applicators shall demonstrate a practical knowledge of a wide variety of environments, since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate

practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

8.3.7 Industrial, Institutional, Structural and Health Related Pest Control Category

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

8.3.7.1.1 General Pest Control Subcategory

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

8.3.7.1.2 Wood Destroying Pest Control Subcategory

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

8.3.7.1.3 Fumigation (Non-agricultural) Subcategory

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

8.3.7.1.4 Wood Preservative Subcategory

8.3.7.1.4.1 Applicators must demonstrate a practical knowledge of the pests involved with wood products, including their life cycles, wood degradation, the pesticides available for controlling such problems, and methods of application including pressure, non-pressure and brush-on treatments. Since there is concern regarding the potential for environmental contamination as well as acute and chronic health problems from applicator exposure when using certain wood treating pesticides, specific emphasis will be placed upon demonstrating a practical knowledge of the product use, precautions which are required and found on the labels and labeling of these pesticides and include protective clothing and equipment, sanitation procedures, disposal procedures and environmental precautions. Since treated wood products present potential environmental problems and acute and chronic exposure problems to the users and the general public, whether or not they come into direct contact with the treated wood, applicators must demonstrate a practical knowledge of the consumer information covering use, site, and handling precautions which are found in the Consumer Information Sheets of products registered for pressure treatment and in the labeling for products registered for sap and stain control, ground line treatment of utility poles, and home and farm use (including railroad tie repair).

8.3.7.1.5 Institutional and Maintenance Subcategory

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

8.3.7.1.6 Cooling Tower Subcategory

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

8.3.7.1.7 Miscellaneous Subcategory

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

8.3.8 Public Health Pest Control Category

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

8.3.9 Regulatory Pest Control Category

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

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

8.3.10 Demonstration and Research Pest Control Category

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

8.3.10.2 Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 8.2 above. In addition, they shall be expected to know the specific standards required for paragraph 8.3.1.1 through 8.3.1.9 of this section, applicable to their particular activity, or alternatively, to meet the more inclusive requirements listed under "Demonstration".

8.4 Commercial Applicator Certification Fees, Renewal, and Expiration

8.4.1 Certification Fees

8.4.1.1 Commercial applicators shall pay an annual certification fee of ~~\$20.00~~ **\$30.00**. All certifications shall continue in full force until December 31<sup>st</sup> of each year whereupon they shall become invalid unless renewed, except that a certification, for which a renewal application has been submitted to the Department by November 30<sup>th</sup>, shall remain in full force and effect until such time as the Department gives notice to the applicant of renewal or denial. Application for renewal shall be mailed to all certified applicators by the Department before October 1<sup>st</sup> of each year.

8.4.1.2 Federal, State or Local government employees who are certified under this law are exempt from this fee. This exemption shall remain valid only when applying or supervising the application of pesticides for such governmental agencies.

8.4.2 Certification Renewal

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

8.4.2.2 The reexamination requirement may be satisfied without taking a test, if the commercial applicator provides the Department with evidence that he has completed a specified minimum number of hours attending approved education courses, seminars or programs during the three calendar years preceding certification renewal. The specified number of hours for each category are listed in paragraph 8.4.2.4 below. This exemption from reexamination does not apply to a person holding a lapsed certificate, as described in paragraph 8.4.3 below.

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

8.4.2.4 The number of hours of training required to fulfill paragraph 8.4.2.2 are specified as follows:

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

#### 8.4.3 Expiration

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

8.4.3.2 A person holding a lapsed certificate must be examined as described by paragraph 8.1, in order to receive a new certificate.

8.4.3.3 ~~At~~ A commercial applicator may not purchase, use or supervise the use of a restricted use pesticide during the ninety (90) day grace period following the expiration date of his certificate. In addition, a commercial applicator with an expired certificate is not authorized to act as the designated certified applicator under the licensing provisions of §1206(a).

#### 8.5 Exemptions

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

8.5.1.1 Persons conducting laboratory type research involving restricted use pesticides; and

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

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

**2 DE Reg. 1380 (2/1/99)**

**7 DE Reg. 1674 (6/1/04)**

*(Break in Continuity of Sections)*

**14.0 Records****14.1 COMMERCIAL APPLICATORS**

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

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

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

14.1.3 The date and specific area treated.

14.1.4 The pest against which the pesticide was used.

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

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

14.1.6.1 Wind velocity and direction

14.1.6.2 Temperature

14.1.6.3 Relative humidity

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

14.1.8 Records required by Paragraph 14.1 shall be logged immediately upon completion of the pesticide application, unless good cause is shown.

**14.2 Restricted Use Pesticides Dealers**

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

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

14.2.1.2 The certification identification number of the purchaser or receiver of the pesticide on the document. If the receiver of the restricted use pesticide is other than a certified applicator, a form of photographic identification of the receiver must be presented at the time of delivery.

14.2.1.3 The product name and E.P.A. registration number on the label of the pesticide.

14.2.1.4 The quantity of the pesticide made available for use in the transaction.

14.2.1.5 Date of the sale or transaction.

**7 DE Reg. 1674 (6/1/04)**

*(Break in Continuity of Sections)*

**16.0 Storing and Disposal of Pesticides and Pesticide Containers****16.1 Prohibited Acts**

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

16.1.1.1 In a manner inconsistent with its label or labeling;

16.1.1.2 So as to cause or allow the open dumping of pesticides or pesticide containers;

16.1.1.3 So as to cause or allow open burning of pesticide or pesticide containers.

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

16.1.1.5 So as to violate any applicable state or federal pollution control standard.

**16.2 Pesticide and Pesticide Container Disposal**

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

16.2.1.1 The standard triple rinse procedure is as follows:

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

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

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

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

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

16.2.1.4 In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the empty liner shall be considered the equivalent of triple rinsing. The removed liners must be disposed of in a sanitary landfill. Empty liners removed from pesticide containers that held pesticides listed as hazardous waste are also considered hazardous waste unless the liners are triple rinsed using a solvent or other method approved as equivalent by the DNREC. Once rinsed these liners may be handled and disposed of in a sanitary landfill. Rinsates shall be used in accordance with 16.2.1.1.2.

16.2.1.5 Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to ensure they are empty and to prevent re-use. Glass containers are exempt from this puncture requirement.

16.2.1.6 Pesticide containers labeled for commercial or farm use, which have been triple rinsed and handled in accordance with 16.2.1.1 through 16.2.1.5, shall be disposed of at a sanitary landfill or through a Department accepted recycling program.

16.2.1.7 Unused or unwanted farm or commercial use pesticides that qualify as hazardous waste shall be disposed of in accordance with 7 **Del.C.**, Ch. 63 and the Delaware Regulations Governing Hazardous Waste.

16.2.1.8 Pesticides or pesticide containers which are not subject to these regulations are as follows:

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

16.2.1.8.2 Empty aerosol containers and empty compressed gas cylinders, provided that the empty aerosol containers contain non-reactive propellant and are disposed of according to the product labeling and the empty compressed gas cylinders are returned for re-use.

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

16.2.1.8.4 Pesticides and pesticide containers which are intended solely for home and garden use, provided they are securely wrapped in several layers of paper and disposed of singly through routine municipal solid waste disposal or at a sanitary landfill.

**16.3 Pesticide Storage and Containment**

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

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

16.3.3 ~~Until such time as the Secretary shall~~, along with the Pesticide Advisory Committee and any other person as the Secretary may consult, promulgates more specific rules and regulations covering the storage and containment of pesticides ~~and pesticide containers~~ not provided in 16.1 and 16.3 of this Section, the ~~recommended~~ procedures for the storage and containment of pesticides ~~and containers~~ detailed in Regulations promulgated by the Administrator, United States Environmental Protection Agency, shall be the ~~recommended~~ procedures for Delaware. The Secretary shall make copies of these procedures available to any person needing guidance for proper storage of pesticides or pesticide containers.

**7 DE Reg. 1674 (6/1/04)**

**\*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 Pesticide Section is available at: <http://www.state.de.us/research/AdminCode/title3/600/index.shtml#TopOfPage>**

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**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 101

**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)**

**101 Delaware Student Testing Program**

**A. Type of Regulatory Action Required**  
Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 101 Delaware Student Testing Program in order to comply with Senate bill 320 which amends 14 **Del.C.** §151 and §153. The turn around time for reports on security and confidentiality investigations has also been extended to 20 working days.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards by assessing students more often.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education by requiring standard assessment procedures for all students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses student assessment procedures not health and safety issues.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses student assessment procedures and provides for their legal rights as part of the process.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is some additional cost to the state because of the increase in the number of grades being tested.

## 101 Delaware Student Testing Program

### 1.0 Definition

The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades ~~K~~ 2 to 10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and ~~students with limited English proficiency~~ English Language Learners (ELLs) shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and ~~Students with Limited English Proficiency~~ English Language Learners (ELLs), as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

### 2.0 Levels of Performance

There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades ~~3, 5, 8 and 10~~ 3 through 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. There shall be three levels of performance for students in grade 2 in reading and mathematics. ~~In reading, writing and mathematics at grades 3, 5, 8 and 10 and science and social studies at grades 4, 6, 8 and 11 the~~ The cut points for Distinguished, Exceeds the Standard, and Meets the Standard and Below the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation. ~~Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing.~~ Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education.

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be

classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

**7 DE Reg. 51 (7/1/03)**

**8 DE Reg. 425 (9/1/04)**

### **3.0 Other Indicators of Student Performance**

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. Pursuant to 14 **Del.C.** §153(d)(2) and 153(d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end of course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

**7 DE Reg. 325 (9/1/03)**

### **4.0 Individual Improvement Plan (IIP)**

4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the ~~3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup>~~ 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the ~~8<sup>th</sup>~~ 6<sup>th</sup>, 7<sup>th</sup>, or 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.1.1 Students assessed on the DSTP in grades 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and mentoring programs.

4.4 The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver who must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian or Relative Caregiver concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

**7 DE Reg. 51 (7/1/03)**

**8 DE Reg. 425 (9/1/04)**

#### **5.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. § 153**

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the student's parent, guardian or Relative Caregiver another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent, guardian or Relative Caregiver, the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent, guardian or Relative Caregiver shall be responsible for the cost of providing nonpublic school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a career technical school district or charter school that district or charter school may provide summer school services.

**8 DE Reg. 425 (9/1/04)**

**9 DE Reg. 1175 (2/1/06)**

#### **6.0 High School Diploma Index as Derived from the 10<sup>th</sup> Grade Assessments Pursuant to 14 Del.C. §152**

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index for a distinguished diploma as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004 and 2005.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.

6.4 Students shall qualify for a State of Delaware Distinguished High School diploma or a traditional State of Delaware High School diploma as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.1.1 Beginning with the graduating class of 2006 through and including the graduating class of 2007, "Other Academic Indicators" may be substituted for specific content area DSTP scores. The Other Academic Indicators shall be:

6.4.1.1.1 SAT Verbal score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;

6.4.1.1.2 SAT Verbal score of 622 or higher representing a Performance Level 5 on the reading portion of the diploma index;

6.4.1.1.3 SAT Mathematics score between 547 and 617 representing a Performance Level 4 the mathematics portion of the diploma index;

6.4.1.1.4 SAT Mathematics score of 618 or higher representing a Performance Level 5 on the mathematics portion of the diploma index;

6.4.1.1.5 SAT II Writing score between 554 and 646 representing a Performance Level 4 on the writing portion of the diploma index];

6.4.1.1.6 SAT II Writing score of 647 or higher representing a Performance Level 5 on the writing portion of the diploma index;

6.4.1.1.7 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and

6.4.1.1.8 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.

6.4.1.1.9 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government and Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.

6.4.1.1.10 Other nationally administered tests which have scores that can be converted to the SAT scale may be used if the converted score is equal to or higher than the SAT cut score.

6.4.2 A student who does not qualify for a Distinguished diploma based solely on the diploma index may request the high school submit official documentation of the Other Academic Indicators to the Department.

6.4.3 A student shall be awarded a traditional State of Delaware Diploma provided the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent, guardian or Relative Caregiver.

**7 DE Reg. 51 (7/1/03)**

**8 DE Reg. 425 (9/1/04)**

**9 DE Reg. 1175 (2/1/06)**

**7.0 Security and Confidentiality**

In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 **Del.C.** §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within ~~40 days~~ 20 working days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within ~~40 days~~ 20 working days of the receipt of all reports and information and records shall be kept of all investigations.

**8.0 Procedures for Reviewing Questions and Response Sheets from the Delaware Student Testing Program (DSTP)**

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 A student's parent, guardian or Relative Caregiver may request to view the test questions and that student's responses. In order to review the DSTP questions and that student's responses, the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand alone writing response, the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.

**4 DE Reg. 464 (9/1/00)**

**5 DE Reg. 620 (9/1/01)**

**8 DE Reg. 425 (9/1/04)**

## **9.0 Invalidation and Special Exemptions**

9.1 Invalidation for students in ~~grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies~~ 2 through 10 for reading and mathematics, grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies: Invalidation are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidation may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report ~~Form~~ within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report ~~Form~~.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in ~~grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies~~ 2 through 10 for reading and mathematics, grades 3 through 10 for writing and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and ~~Students with Limited English Proficiency~~ English Language Learners (ELLs) are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a ~~completed~~ Request for Special Exemption ~~Form~~ to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection ~~will accompany the request~~ will be maintained as documentation at the school or district.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a ~~completed~~ DSTP Request for Special Exemption ~~Form~~ to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician ~~which describes the nature of the situation~~ that shall be maintained as documentation in the school or district.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.4.2 Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 **DE Admin Code** 103.2.4 unless their medical condition prevents them from being in school during the testing period.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades ~~3, 5, or 8~~ 2 through 8 for the testing period to which the exemption applies.

**5 DE Reg. 2115 (5/1/02)**

**8 DE Reg. 425 (9/1/04)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 745

### Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

#### 745 Criminal Background Check for Public School Related Employment

##### A. Type of Regulatory Action Required

Amendment to Existing Regulation

##### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 745 Criminal Background Check for Public School Related Employment in order to include charter schools and to require a criminal background check when employees change school districts and or change between school districts and charter schools. The amendments also change the number of days that substitute teachers must work in one year to avoid additional criminal background checks from year to year.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses criminal background checks for public school employment not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses criminal background checks for public school employment not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses criminal background checks for public school employment and that may help to ensure student safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses criminal background checks for public school employment not students' legal rights.

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost of additional criminal background checks will be supplemented by the State.

## 745 Criminal Background Check for Public School Related Employment

### 1.0 Applicability of Regulations

1.1 ~~Effective July 1, 1994, the following "covered Personnel" shall be required to initiate the criminal background check process:~~

~~1.1.1 All final candidates for public school related employment for compensation;~~

~~1.1.2 All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and~~

~~1.1.3 All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility [EPER] position) in public schools whether the person receives compensation or not.~~

1.2 Notwithstanding the definition of "covered Personnel" in 1.1, the following persons are not subject to these regulations:

~~1.2.1 Instructors in adult corrections institutions;~~

~~1.2.2 Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;~~

~~1.2.3 Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts, and the Delaware Institute for the Arts in Education; and~~

~~1.2.4 Substitute food service workers.~~

### 1.0 Definitions

"Continuously Employed" means having worked in the same public school district or charter school for at least ninety one (91) working days in the prior school year. Substitute teachers shall be considered Continuously Employed when they have worked forty five (45) days in the prior school year in any combination of Delaware school districts or charter schools.

"Covered Personnel" means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and
- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.
- Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:
  - Instructors in adult corrections institutions;
  - Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;
  - Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
  - Substitute food service workers.

### 2.0 Procedures for Candidates for Employment or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

2.1 A final candidate for a ~~covered personnel~~ Covered Personnel position, as defined in 1.0, in a public school shall be subject to the following procedures:

2.1.1 After notification by a school district or charter school that he/she is a final candidate for a ~~covered personnel~~ Covered Personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on site appointment arranged by the school district or charter school. School districts and charter schools at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.

2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts and charter schools as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.

2.1.3 The candidate shall have the original of the completed criminal background check sent to one school district or charter school. A copy of all information sent to the school district or charter school shall be sent by the State Bureau of Identification to the candidate.

2.1.4 As a part of the application for public school related employment or as a part of the contract for services, the candidate shall sign a release form approved by the Department of Education. The release will allow the school district or charter school that was sent the original of the completed criminal background check to do the following:

2.1.4.1 Confirm the receipt of that original and disclose its contents to the district superintendent or charter school director or ~~the district or charter school~~ chief personnel officer of other Delaware school districts or charter schools considering the person as a candidate.

2.1.4.2 Send the original criminal background check to the placing school district or charter school if the candidate is hired or placed under contract in another Delaware school district or charter school.

2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s) or charter school(s).

2.1.5 Each final candidate shall have a determination of suitability made by the school district or charter school and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as set forth in 5.0.

2.1.6 Final candidates for employment or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met:

2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;

2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district or charter school;

2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware school district or charter school which was sent the original background check.

2.1.6.4 The out of state candidate shall sign a release to allow the school district or charter school receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a ~~covered personnel~~ Covered Personnel position. School districts or charter schools may use funds other than state funds to pay for criminal background check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one school district or charter school during the course of the school year.

### **3.0 Procedures for School Districts and Charter Schools for Criminal Background Checks on Candidates for Employment or for Persons Providing Services Under a Contract**

3.1 School districts and charter schools shall require all persons subject to the law and these regulations to complete a release as a part of the application or contract submissions process and, if they become a final candidate for a ~~covered personnel~~ Covered Personnel position, to initiate the criminal background check process prior to entering into the ~~covered personnel~~ Covered Personnel position.

3.2 The school district or charter school sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:

3.2.1 If requested by another Delaware school district superintendent or charter school director ~~superintendent~~ or school district or charter school chief personnel officer and assured that a signed release is on file in the requesting district or charter school, confirm the receipt of that original and disclose its contents to the

superintendent or director or the chief personnel officer of the requesting Delaware school district or charter school considering the person for hire;

3.2.2 If requested by another Delaware school district superintendent or charter school director superintendent or school district or charter school chief personnel officer and sent a copy of the signed release on file in the requesting district or charter school, send the original criminal background check to the requesting Delaware school district or charter school if the candidate is placed in a ~~covered personnel~~ Covered Personnel position; and

3.2.3 If sent any subsequent criminal history information on the person hired, placed under contract or assuming an extra duty position in another district or charter school, forward such information to the school district or charter school.

3.2.4 School districts or charter schools may also share and forward the above information with the Delaware Department of Education under the same conditions applicable to school districts or charter schools. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.

3.3 The school district or charter school, in accordance with 11 **Del.C.** §8571(b), (d) and (e), shall make a determination of suitability for employment on each person it requested to initiate the criminal background check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as set forth in 5.0.

3.4 When a candidate is finally placed in a ~~covered personnel~~ Covered Personnel position the district or charter school shall do the following if the original of the completed criminal background check is not yet in its possession:

3.4.1 Make a written request to the school district or charter school that received the original of the completed criminal background check to forward the original copy to the placing district or charter school for placement in the employee's or contractor's file. As a part of the request, the placing district or charter school shall forward a copy of the release signed by the candidate.

3.4.2 Notify the State Bureau of Identification that the candidate has become ~~covered personnel~~ Covered Personnel in the district or charter school and is no longer associated with the school district or charter school that received the original of the completed criminal background check.

3.5 A school district or charter school may place the candidate in a ~~covered personnel~~ Covered Personnel position provisionally in accordance with 11 **Del.C.** §8571(f); however, the school district or charter school shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

#### 4.0 Length of Validity of Criminal Background Check and Exemption for "Continuous Employment"

4.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not ~~"continuously employed"~~ Continuously Employed by a Delaware school district or charter school within that period, the district or charter school receiving the original criminal background check need not retain it beyond that time. If the person becomes ~~"continuously employed"~~ Continuously Employed by a Delaware school district or charter school, the original criminal background check shall be kept on file for a minimum of five (5) years, ~~or until sent to an employing school district or the Department of Education.~~

4.2 Each person who has been ~~"continuously employed"~~ Continuously Employed in a public school district or charter school shall be exempt from the screening provisions of 11 **Del.C.** §8571. ~~For the purpose of these regulations pertaining to Delaware school districts or charter schools, the term "continuously employed" "Continuously Employed", as used in 11 Del.C. §8570(3), shall apply to mean any person who has worked in a covered personnel position in the same public school district or charter school for at least fifteen (15) forty five working (45) days in the prior school year. At district or charter school option, a full time person may be exempt upon transfer between public school districts or charter schools if the person has:~~

4.2.1 ~~Submitted a criminal background check within the past five years;~~

4.2.2 ~~No break in service since the date of the check, and~~

4.2.3 ~~Requests that the records of that check are forwarded from the prior district to the new district prior to entering into a covered personnel position.~~

4.3 ~~Substitute teachers may be considered to be "continuously employed" when they work fifteen (15) days in any combination of school districts, or ten (10) days in any one school district.~~

~~4.4.4.3~~ A person not exempted in 4.2 or 4.3 who is placed in a covered personnel position by another Delaware school district A person who transfers between Delaware public school districts or charter schools and is placed in a Covered Personnel position shall comply with 11 **Del.C.** § 8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 **Del.C.** §8570, et seq., and these regulations.

## **5.0 Determination of Suitability and Appeal Process**

5.1 A person covered by 11 **Del.C.** §8570, et seq., and these regulations, shall have the opportunity to respond to a school district or charter school regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 **Del.C.** §8571(d). Such a response shall be made within ten (10) working days of the person's receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district or charter school pursuant to the factors listed in 11 **Del.C.** §8571(d).

5.2 The school district or charter school shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a ~~covered personnel~~ Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as set forth in 5.2.1 through 5.2.3.

5.2.1 Appeal shall be initiated by a person notified that he/she is being denied or being terminated from placement in a covered personnel position, pursuant to 11 **Del.C.** §8571, by submitting a letter of appeal to the district superintendent within ten (10) working days of the receipt of written notice.

5.2.2 The appeal shall be reviewed by the district superintendent and the person shall be given the right to be heard by the district superintendent within ten (10) working days of the receipt of the letter of appeal.

5.2.3 A written decision shall be rendered by the district superintendent within ten (10) working days of the hearing. A decision made by the district superintendent under this appeal procedure are final, unless the district has made specific provisions for appeal to another entity within the district. The decision may not be appealed to the State Board of Education or to the Department of Education.

### 5.3 Appeal for Reconsideration

~~5.23.1~~ Appeal An appeal for reconsideration shall be initiated by a person notified that he/she is being denied or being terminated from placement in a ~~covered personnel~~ Covered Personnel position, pursuant to 11 **Del.C.** §8571, by submitting a letter of appeal to the district superintendent or charter school director within ten (10) working days of the receipt of written notice.

~~5.23.2~~ The appeal shall be reviewed by the district superintendent or charter school director and the ~~person appellant~~ person appellant shall ~~be given~~ have the right to be heard by the district superintendent or charter school director ~~superintendent~~ within ten (10) working days of the receipt of the letter of appeal.

~~5.3.2.1~~ Local school districts and charter schools shall develop procedures for appeals for reconsideration. The process shall be as informal and accessible as possible, but shall allow for impartial and complete review.

~~5.23.3~~ A written decision shall be rendered by the district superintendent or charter school director within ten (10) working days of the hearing. A decision made by the district superintendent or charter school director under this appeal procedure ~~are is~~ is final, unless the district or charter school has made specific provisions for appeal to another entity within the district or charter school. The decision ~~may not be appealed~~ shall not be appealable to the State Board of Education or to the Department of Education.

## **6.0 Confidentiality**

6.1 All records pertaining to criminal background checks, pursuant to 11 **Del.C.** §8570, et seq., and these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

6.1.1 Access to criminal background check records, and letter of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the district superintendent or charter school director and the district or charter school chief personnel office and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality and be required to sign an agreement to keep such information confidential;

6.1.2 All such records shall be kept in locked, fireproof cabinets;

6.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a ~~covered personnel~~ Covered Personnel position.

## 7.0 Penalties

The district superintendent or charter school director or the district or charter school chief personnel officer shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 11 **Del.C.** §8571.

## 8.0 Subsequent Criminal History Information

8.1 Subsequent criminal history on a person in a ~~covered personnel~~ Covered Personnel position shall ~~may~~ be sent by the State Bureau of Identification to the district superintendent or charter school director or district or charter school chief personnel office and shall be used by district or charter school in making a determination about the person's continued suitability for placement in a public school environment.

8.2 If subsequent criminal history information is mistakenly directed to a district or charter school other than the current district or charter school of ~~covered personnel~~ Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.

8.3 If a person is known to be in a ~~covered personnel~~ Covered Personnel position in more than one district or charter school, the superintendent, director or chief personnel officer of the district or charter school receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent, charter school director or district or charter school chief personnel officer of the other school district or charter school.

**5 DE Reg. 865 (10/1/01)**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1103

### Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

#### 1103 Standards for School Bus Chassis and Bodies for Buses Placed in Production on or after January 1, 2007

(Terminology and School Bus Types are those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). Multifunction School Activity Buses shall also meet all of the Following School Bus Chassis and Body Standards.

#### A. Type of Regulatory Action Required

New Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 14 **DE Admin. Code** 1103 Standards for School Bus Chassis and Bodies for Buses Placed in Production on or After January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005). Multifunction School Activity Buses shall also meet all of the Following School Bus Chassis and Body Standards. Regulation 1103 is a new regulation that provides specifications for new school buses that will be built after January 1, 2007. It follows Regulations 1102 and 1101 which include standards for school buses built in prior years.

The new regulation generally follows the *2005 National School Transportation Specifications and Procedures (NSTSP)*. The NSTSP is revised every five years by the National Congress on School Transportation. Each state sends a delegation to the congress, and ours is made up of seven representatives from the school districts, contractors and the DOE. The NSTSP incorporates new technologies and school bus safety improvements. Since its publication,

the Delaware delegation met several times to review proposed changes. Additional coordination was made with the Division of Motor Vehicles and the three major school bus vendors and their technical representatives.

## C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses standards for school bus chassis and bodies not student achievement.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses standards for school bus chassis and bodies not equitable education issues.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses standards for school bus chassis and bodies helping to protect students' safety.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses standards for school bus chassis and bodies not legal rights issues.
5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.
8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The State covers the cost of school buses.

**1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007(terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP), May 2005). Multifunction School Activity Buses shall also meet all of the following school bus chassis and body standards.***

## **1.0 Bus Chassis Standards**

### **1.1 Air Cleaner**

**1.1.1 A dry element type air cleaner shall be provided.**

**1.1.2 All diesel engine air filters shall include a latch type restriction indicator that retains the maximum restriction developed during operation of the engine. The indicator shall include a reset control so the indicator can be returned to zero when desired.**

**1.2 Axles: The front and rear axle and suspension systems shall have a Gross Axle Weight Rating (GAWR) at ground commensurate with the respective front and rear weight loads of the bus loaded to the rated passenger capacity.**

**1.2.1 All buses with a capacity of 66 passengers or greater shall have a 9,000 pound front axle minimum.**

### **1.3 Brakes, General**

**1.3.1 The chassis brake system shall conform to the provisions of Federal Motor Vehicle Safety Standard (FMVSS) Nos. 105, Hydraulic and Electric Brake Systems, 106, Brake Hoses, and 121, Air Brake Systems, as applicable.**

**1.3.2 The antilock brake system (ABS), provided in accordance with FMVSS No. 105, Hydraulic and Electric Brake Systems, or No. 121, Air Brake Systems, shall provide wheel speed sensors for each front wheel and for**

each wheel on at least one rear axle. The system shall provide antilock braking performance for each wheel equipped with sensors (Four Channel System).

1.3.3 All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

1.3.4 The brake lines, booster assist lines, and control cables shall be protected from excessive heat, vibration and corrosion and installed in a manner that prevents chafing.

1.3.5 The parking brake system for either air or hydraulic service brake systems may be of a power assisted design. The power parking brake actuator should be a device located on the instrument panel within reach of a seated 5th percentile female driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

1.3.6 The power operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

1.4 Brakes, Hydraulic: Buses using a hydraulic assist brake shall be equipped with audible and visible warning signals that provide a continuous warning to the driver indicating a loss of fluid flow from the primary source or a failure of the back up pump system.

#### 1.5 Brakes, Air

1.5.1 The air pressure supply system shall include a desiccant type air dryer installed according to the manufacturer's recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

1.5.2 The chassis manufacturer shall provide an accessory outlet for air operated systems installed by the body manufacturer. This outlet shall include a pressure protection valve to prevent loss of air pressure in the service brake reservoir.

1.5.3 For air brake systems, an air pressure gauge shall be provided in the instrument panel capable of complying with Commercial Driver's License (CDL) pretrip inspection requirements.

1.5.4 Air brake equipped buses shall be equipped with a service brake interlock, so that the parking brake cannot be released until the brake pedal is depressed.

1.5.5 Air brake systems shall include a system for anti compounding of the service brakes and parking brakes.

1.5.6 Air brakes shall have both a visible and audible warning device whenever the air pressure falls below the level where warnings are required under FMVSS No. 121, Air Brake Systems.

#### 1.6 Bumper Front

1.6.1 School buses shall be equipped with a heavy duty front bumper. The front bumper shall be furnished by the chassis manufacturer for all school bus types unless there is a specific alternate agreement between the chassis manufacturer and body manufacturer.

1.6.2 The front bumper on buses of Type A-2 (with a GVWR greater than 14,500 pounds), Type B, Type C, and Type D shall be equivalent in strength and durability to pressed steel channel at least 3/16 inches thick and not less than 8 inches wide (high). It shall extend beyond the forward most part of the body, grille, hood, and fenders and shall extend to outer edges of the fenders at the bumper's top line.

1.6.3 Type A buses having a GVWR of 14,500 pounds or less may be equipped with an OEM supplied front bumper. The front bumper shall be of sufficient strength to permit being pushed by another vehicle on a smooth surface with a 5 degree, (8.7 percent) grade, without permanent distortion. The contact point on the front bumper is intended to be between the frame rails, with as wide a contact area as possible. If the front bumper is used for lifting, the contact points shall be under the bumper attachments to the frame rail brackets unless the manufacturer specifies different lifting points in the owner's manual. Contact and lifting pressures should be applied simultaneously at both lifting points.

1.6.4 The front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight, per 1.6.2 and 1.6.3, without permanent distortion to the bumper, chassis or body.

1.6.5 The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow hooks eyes. For the purpose of meeting this standard, the bus shall be empty and positioned on a level, hard surface and both tow hooks eyes shall share the load equally.

1.7 Certification: Upon request of the Delaware Department of Education, the chassis manufacturer shall certify that its product meets the state's minimum standards on items not covered by the FMVSS certification requirements of 49 CFR, Part 567.

1.8 Clutch

1.8.1 Clutch torque capacity shall be equal to or greater than the engine torque output.

1.8.2 A starter interlock shall be installed to prevent actuation of the starter if the clutch pedal is not depressed.

1.9 Color

1.9.1 The chassis, including wheels and front bumper, shall be black. Body cowl, hood and fenders shall be in National School Bus Yellow (NSBY). The flat top surface of the hood may be painted with nonreflective NSBY. (See Appendix B, 2005 National School Transportation Specifications and Procedures (NSTSP)).

1.9.2 Wheels shall be black or aluminum.

1.9.3 Wheel covers shall not be permitted and hubs and lug nuts shall be exposed.

1.9.4 Buses shall be equipped with mud flaps. They shall be black except they may have manufacturer's logo or name in white or yellow.

1.10 Daytime Running Lamps: Head lamps shall be provided with a switch to automatically operate the lamps when the vehicle is placed in gear or the parking brake is released. If this switch is designed to provide reduced illumination under normal operating conditions, a means whereby the head lamps can be engaged at full power shall be provided.

1.11 Drive Shaft: The drive shaft shall be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground, if broken.

1.12 Electrical System

1.12.1 Battery

1.12.1.1 Buses shall be equipped with a minimum of two batteries having a minimum total cold cranking capacity rating of 1100 CCA (cold cranking amps).

1.12.1.2 Since all batteries are to be secured in a sliding tray in the body, chassis manufacturers shall mount the battery temporarily on the chassis frame, except that van conversion or cutaway front section chassis may be secured in accordance with manufacturer's standard configuration. In these cases, the final location of the battery and the appropriate cable lengths shall be agreed upon mutually by the chassis and body manufacturers. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack, and be of sufficient gauge to carry the required amperage.

1.12.2 Alternator

1.12.2.1 All Type A-2 and Type B buses with a GVWR of 15,000 pounds or less shall have a minimum 130 ampere alternator

1.12.2.2 Type A-2 and Type B buses over 15,000 pounds GVWR and all Type C and Type D buses shall be equipped with a heavy duty truck or bus type alternator having a minimum output rating of 130 amperes or higher, and should produce a minimum current output of 50 percent of the rating at engine idle speed.

1.12.2.3 Buses equipped with an electrically powered wheelchair lift, air conditioning or other accessories may be equipped with a device that monitors the electrical system voltage and advances the engine idle speed when the voltage drops to, or below, a preset level.

1.12.2.4 Buses equipped with an electrically powered wheelchair lift shall have a minimum 175 ampere alternator

1.12.2.5 A belt alternator drive shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components. (For estimating required alternator capacity, see School Bus Manufacturers Technical Council's (SBMTC) publication, "School Bus Technical Reference," available at <http://www.nasdpts.org>)

1.12.2.6 A direct drive alternator is permissible in lieu of a belt driven alternator.

1.12.3 Electrical Components: Materials in all electrical components shall contain no mercury.

1.12.4 Wiring

1.12.4.1 All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers (SAE).

1.12.4.1.1 All wiring shall use color and at least one other method for identification. The other method shall be either a number code or name code, and each chassis shall be delivered with a wiring diagram that illustrates the wiring of the chassis.

# PROPOSED REGULATIONS

1.12.4.1.2 Body accessories shall be wired through the ignition switch and the clearance lights through a separate switch wired through the electronic controlled body solenoid module.

1.12.4.2 The chassis manufacturer of an incomplete vehicle shall install a readily accessible terminal strip or connector on the body side of the cowl or in an accessible location in the engine compartment of vehicles designed without a cowl. The strip or connector shall contain the following terminals for the body connections:

- 1.12.4.2.1 Main 100 amp body circuit;
- 1.12.4.2.2 Tail lamps;
- 1.12.4.2.3 Right turn signal;
- 1.12.4.2.4 Left turn signal;
- 1.12.4.2.5 Stop lamps;
- 1.12.4.2.6 Backup lamps; and
- 1.12.4.2.7 Instrument panel lights (rheostat controlled by headlamp switch)

## 1.12.5 Circuits

1.12.5.1 An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits shall be provided to the body manufacturer for distribution to the end user.

1.12.5.1.1 Wiring for the headlamp system must be separate from the electronic controlled body solenoid module.

1.13 Engine: All engines shall have an engine block heater.

1.14 Engine Fire Extinguisher: The chassis manufacturer may provide an automatic fire extinguisher system in the engine compartment.

## 1.15 Exhaust System

1.15.1 The exhaust pipe, muffler and tailpipe shall be outside the bus body compartment and shall be attached to the chassis so any other chassis component is not damaged.

1.15.2 The tailpipe shall be constructed of a corrosion resistant tubing material at least equal in strength and durability to 16 gauge steel tubing of equal diameter.

1.15.3 Chassis manufacturers shall furnish an exhaust system with a tailpipe of sufficient length to exit to the left or right of the emergency exit door in the rear of the vehicle. The tailpipe shall extend at least five inches beyond the end of the chassis frame.

1.15.3.1 On Types C and D vehicles, the tailpipe shall not exit beneath a fuel fill or emergency door exit.

1.15.3.2 Types A and B chassis may be furnished with the manufacturer's standard tailpipe configuration.

1.15.3.3 Chassis manufacturers may furnish a tailpipe that exits through the rear bumper.

1.15.4 The exhaust system on a chassis shall be adequately insulated from the fuel system.

1.15.5 The muffler shall be constructed of corrosion resistant material.

1.15.6 The exhaust system on the chassis may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

1.15.7 The tailpipe may be flush with, but shall not extend out more than two inches beyond the bumper.

## 1.16 Fenders, Front Type C Vehicles

1.16.1 When measured at the fender line, the total spread of the outer edges of front fenders shall exceed the total spread of front tires when front wheels are in a straight ahead position.

1.16.2 Front fenders shall be properly braced and shall not require attachment to any part of the body.

## 1.17 Frame

1.17.1 Frame lengths shall be established in accordance with the design criteria for the complete vehicle.

1.17.2 Making holes in top or bottom flanges or side units of the frame and welding to the frame shall not be permitted except as provided or accepted by the chassis manufacturer.

1.17.3 Frames shall not be modified for the purpose of extending the wheel base.

1.17.4 Any secondary manufacturer that modifies the original chassis frame shall provide a warranty at least equal to the warranty offered by the original equipment manufacturer (OEM), and shall certify that the

modification and other parts or equipment affected by the modification shall be free from defects in material and workmanship under normal use and service intended by the OEM.

## 1.18 Fuel System

1.18.1 Fuel tank(s) for school buses with capacity of 36 passengers and above having a minimum 60 gallon capacity shall be provided by the chassis manufacturer. School buses less than a capacity of 36 shall have a manufacturer's standard fuel tank. Each tank shall be filled from and vented to the outside of the passenger compartment and each fuel filler shall be placed in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

1.18.2 The fuel system shall comply with FMVSS No. 301, Fuel System Integrity.

1.18.3 Fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle.

1.18.4 The actual draw capacity of each fuel tank shall be a minimum of 83% of the tank capacity.

1.18.5 Installation of alternative fuel systems, including fuel tanks and piping from tank to the engine, shall comply with all applicable fire codes in effect on the date of manufacture of the bus.

1.18.6 Fuel gauges must be calibrated for size of tank used. If more than one tank is used, there must be a gauge for each tank.

1.18.7 Installation of Liquefied Petroleum Gas (LPG) tanks shall comply with National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code.

1.18.8 Installation of Compressed natural gas (CNG) containers shall comply with FMVSS No. 304, Compressed Natural Gas Fuel Container Integrity.

1.19 Governor: An electronic engine speed limiter shall be provided and set to limit engine speed, not to exceed the maximum revolutions per minute, as recommended by the engine manufacturer. 1.18.9 The CNG Fuel System shall comply with FMVSS No. 303, Fuel System Integrity of Compressed Natural Gas Vehicles.

1.20 Heating System, Provision For: The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The openings shall be suitable for attaching 3/4 inch pipe thread hose connectors. The engine shall be capable of supplying coolant at a temperature of at least 170 degrees Fahrenheit at the engine cooling thermostat opening. The coolant flow rate shall be 50 pounds per minute at the return end of 30 feet of one inch inside diameter automotive hot water heater hose. (See SBMTC-001, Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment.)

1.21 Horn: The bus shall be equipped with a horn(s) of standard make with the horn(s) capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J377, Horn Forward Warning Electric Performance, Test, and Application.

## 1.22 Instruments and Instrument Panel

1.22.1 The chassis shall be equipped with the instruments and gauges listed below. (Telltale warning lamps in lieu of gauges are not acceptable, except as noted):

1.22.1.1 Speedometer;

1.22.1.2 Odometer which will give accrued mileage (to seven digits), including tenths of miles, unless tenths of miles are registered on a trip odometer. Odometer is to be able to be read without using a key;

1.22.1.3 Tachometer (Note: For Types B, C, and D buses, a tachometer shall be installed so as to be visible to the driver while seated in a normal driving position.);

1.22.1.4 Voltmeter (Note: An ammeter with graduated charge and discharge indications is permitted in lieu of a voltmeter; however, when used, the ammeter wiring must be compatible with the current flow of the system);

1.22.1.5 Oil pressure gauge;

1.22.1.6 Water temperature gauge;

1.22.1.7 Fuel gauge;

1.22.1.8 Upper beam headlight indicator;

1.22.1.9 Brake air pressure gauge and low pressure lamp (air brakes), or brake indicator lamp (hydraulic brakes);

1.22.1.10 Turn signal indicator; and

1.22.1.11 Glow plug indicator light, where appropriate

1.22.2 All instruments shall be easily accessible for maintenance and repair.

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1.22.3 The instruments and gauges shall be mounted on the instrument panel so that each is clearly visible to the driver while seated in a normal driving position.

1.22.4 Instruments and controls must be illuminated as required by FMVSS No. 101, Controls and Displays.

1.22.5 Multi function gauge (MFG)

1.22.5.1 The driver must be able to manually select any displayable function of the gauge on a MFG, whenever desired.

1.22.5.2 Whenever an out of limits condition that would be displayed on one or more functions of a MFG occurs, the MFG controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated telltale warning lamp, as well as having the MFG automatically display the out of limits indications. If two or more functions displayed on the MFG go out of limits simultaneously, then the MFG should sequence automatically between those functions continuously until the condition(s) are corrected.

1.22.5.3 The use of a MFG does not relieve the need for audible warning devices, where required.

1.23 Oil Filter: An oil filter with a replaceable element shall be provided and connected by flexible oil lines if it is not a builtin or an engine mounted design. The oil filter shall have a capacity in accordance with the engine manufacturer's recommendation.

1.24 Openings: All openings in the floorboard or firewall between chassis and the passenger compartment (e.g. for gearshift selector and parking brake lever) shall be sealed.

1.25 Passenger Load

1.25.1 The actual gross vehicle weight (GVW) is the sum of the chassis weight plus the body weight, plus the driver's weight, plus total seated student weight. For purposes of calculation, the driver's weight is 150 pounds and the student weight is 120 pounds per student.

1.25.2 Actual GVW shall not exceed the chassis manufacturer's GVWR for the chassis, nor shall the actual weight carried on any axle exceed the chassis manufacturer's Gross Axle Weight Rating (GAWR).

1.25.3 The manufacturer's GVWR for a particular school bus shall be furnished by manufacturers in duplicate (unless more copies are requested) to the Delaware Department of Education. The Department of Education shall, in turn, transmit such ratings to the Delaware Department of Transportation, Division of Motor Vehicles.

1.26 Power and Grade Ability:

1.26.1 GVWR shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

1.26.2 For school buses with less than 36 passenger capacity, the minimum power plant shall be 160 hp engine or equal.

1.26.3 For school buses with a capacity of 36 passengers or greater, the engine will produce at least 190 hp measured at an RPM not to exceed 2,600 and generate at least 420 foot pounds of torque.

1.27 Retarder System: A retarder system, if used, shall limit the speed of a fully loaded school bus to 19.0 mph on a 7% grade for 3.6 miles.

1.28 Road Speed Control: The bus shall be equipped with a vehicle speed limiter to accurately control vehicle maximum speed to 65 miles per hour.

1.29 Shock Absorbers: The bus shall be equipped with double action shock absorbers compatible with the manufacturer's rated axle capacity at each wheel location.

1.30 Steering Gear

1.30.1 The steering gear shall be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

1.30.2 If external adjustments are required, the steering mechanism shall be accessible to make adjustments.

1.30.3 Changes shall not be made to the steering apparatus which are not approved by the chassis manufacturer.

1.30.4 There shall be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield or any other surface.

1.30.5 Power steering is required and shall be of the integral type with integral valves.

1.30.6 The steering system shall be designed to provide a means for lubrication of all wear points that are not permanently lubricated.

1.30.7 On Type C and D buses, the steering column wheel shall have tilt capability and may have telescopic capability.

1.31 Suspension Systems

1.31.1 The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR.

1.31.2 Rear leaf springs shall be of a progressive rate or multi stage design. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf, in addition to the main leaf.

1.32 Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

1.33 Tires and Rims

1.33.1 Rims and tires of the proper size and load rating commensurate with chassis manufacturer's GVWR shall be provided. All wheel rims shall be the same size to allow for interchangeability. The use of multi piece rims shall not be permitted.

1.33.2 Dual rear tires shall be provided on Type A-2, Type B, Type C, and Type D school buses.

1.33.3 All tires on a vehicle shall be tubeless radials and be of the same size, and the load range of the tires shall meet or exceed the GVWR, as required by FMVSS No. 120, Tire Selection and Rims for Vehicles other than Passenger Car.

1.33.4 If the vehicle is equipped with a spare tire and rim assembly, it shall be the same size as those mounted on the vehicle.

1.33.5 If a tire carrier is required, it shall be suitably mounted in an accessible location outside of the passenger compartment.

1.34 Tow Eyes or Hooks: Tow eyes or hooks shall be furnished and attached so they do not project beyond the front bumper. Tow eyes or hooks attached to the frame chassis shall be furnished by the chassis manufacturer. This installation shall be in accordance with the chassis manufacturer's specifications. Tow hooks or eyes shall have an individual strength rating of 13,500 pounds each, for a combined rating of 27,000 pounds. For pulling and lifting purposes, tow hooks are meant to be used simultaneously. For pulling, angularity applied to the tow hooks will decrease the capacities of the tow hooks. (Note: Type A buses are exempt from this requirement for front tow hooks or eyes due to built in crush zones.)

1.35 Transmission

1.35.1 Automatic transmissions shall have no fewer than three forward speeds and one reverse speed. Mechanical shift selectors shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering column mounted.

1.35.2 In manual transmissions, second gear and higher shall be synchronized, except when incompatible with engine power. A minimum of five forward speeds and one reverse speed shall be provided.

1.35.3 Automatic transmissions incorporating a parking pawl shall have a transmission shift interlock controlled by the application of the service brake to prohibit accidental engagement of the transmission. All non park pawl transmissions shall incorporate a park brake interlock that requires the service brake to be applied to allow release of the parking brake.

1.36 Turning Radius

1.36.1 A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb to curb measurement.

1.36.2 A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb to curb measurement.

1.37 Undercoating: The chassis manufacturers, or their agents, shall coat the undersides of steel or metallic constructed front fenders with a rust proofing compound, for which the compound manufacturer has issued notarized certification of compliance to chassis builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, Coating Compound, Bituminous, Solvent Type, Underbody, using modified tests.

## **2.0 Bus Body Standards**

2.1 Aisle

2.1.1 All emergency exit doors shall be accessible by a 12 inch minimum aisle. The aisle shall be unobstructed at all times by any type of barrier, seat, wheelchair or tiedown. The track of a track seating system is exempt from this requirement.

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2.1.2 Flip seats shall not be used.

2.1.3 The seat backs shall be slanted sufficiently to give aisle clearance of 15 inches at tops of seat backs.

2.2 Back Up Warning Alarm: An automatic audible alarm shall be installed behind the rear axle and shall comply with the published Backup Alarm Standards (SAE J994b), providing a minimum of 112 dBA, or shall have a variable volume feature that allows the alarm to vary from 87 dBA to 112 dBA sound level, staying at least 5 dBA above the ambient noise level.

2.3 Battery

2.3.1 The battery is to be furnished by the chassis manufacturer.

2.3.2 When the battery is mounted as described in the "Bus Chassis Standards", the body manufacturer shall securely attach the battery on a slide out or swing out tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. The battery compartment door or cover shall be hinged at the front or top and shall be secured by an adequate and conveniently operated latch or other type fastener. Battery cables installed by the body manufacturer shall meet chassis manufacturer and SAE requirements. Battery cables shall be of sufficient length to allow the battery tray to fully extend. The battery compartment is required on Type A-1 diesel buses.

2.3.3 Buses may be equipped with a battery shut off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

2.4 Bumper (Front)

2.4.1 If the chassis manufacturer does not provide a bumper on a Type D school bus, the bumper shall be provided by the body manufacturer. The bumper shall conform to the standards described in the "Bus Chassis Standards".

2.5 Bumper (Rear)

2.5.1 The bumper on Type A-1 buses shall be a minimum of 8 inches wide (high). Bumpers on Types A-2, B, C and D buses shall be a minimum of 9 ½ inches wide (high). The bumper shall be of sufficient strength to permit being pushed by another vehicle of similar size and being lifted by the bumper without permanent distortion.

2.5.2 The bumper shall wrap around the back corners of the bus. It shall extend forward at least 12 inches, measured from the rear most point of the body at the floor line, and shall be mounted flush with the sides of the body or protected with an end panel.

2.5.3 The bumper shall be attached to the chassis frame in such a manner that it may be removed. It shall be braced to resist deformation of the bumper resulting from impact from the rear or the side. It shall be designed to discourage hitching of rides by an individual.

2.5.4 The bumper shall extend at least 1 inch beyond the rear most part of the body surface measured at the floor line.

2.5.5 The bottom of the rear bumper shall not be more than 30 inches above the ground level.

2.6 Ceiling: See "Insulation and Interior", this section.

2.7 Certification: Upon request from the Delaware Department of Education, the body manufacturer shall certify that its product meets state standards on items which are not covered by FMVSS certification requirements of 49 CFR, Part 567, Certification.

2.8 Chains (Tire): See "Wheelhousing", this section.

2.9 Color

2.9.1 The school bus body shall be painted National School Bus Yellow (NSBY). (See NSTSP, Appendix B)

2.9.2 The body exterior paint trim, bumper, lamp hoods, rub rails, emergency door arrow, and lettering shall be black. (See illustration in NSTSP, Appendix B)

2.9.3 Except for the front and rear roof caps, the roof of the bus may be painted white. (See NSTSP, Appendix B)

2.10 Communications: Buses shall be equipped with a radio (non CB) or telephonic communication device. It will be added by the school district, school, or contractor.

2.11 Construction

2.11.1 Side Intrusion Test:

2.11.1.1 The bus body shall be constructed to withstand an intrusion force equal to the curb weight of the vehicle or 20,000 pounds, whichever is less. Each vehicle shall be capable of meeting this requirement when tested in accordance with the procedures set forth below.

2.11.1.2 The complete body structure, or a representative seven body section mock up with seats installed, shall be load tested at a location 24 + or 2 inches above the floor line, with a maximum 10 inch diameter cylinder, 48 inches long, mounted in a horizontal plane.

2.11.1.3 The cylinder shall be placed as close as practical to the mid point of the tested structure, spanning two internal vertical structural members. The cylinder shall be statically loaded to the required force of curb weight or 20,000 pounds, whichever is less, in a horizontal plane with a load applied from the exterior toward the interior of the test structure. When the minimum load has been applied, the penetration of the loading cylinder into the passenger compartment shall not exceed ten inches from its original point of contact. There can be no separation of lapped panels or construction joints. Punctures, tears or breaks in the external panels are acceptable but are not permitted on any adjacent interior panel.

2.11.1.4 Body companies shall certify compliance with this intrusion requirement and include test results, as requested.

2.11.2 Construction shall be reasonably dust proof and watertight.

## 2.12 Crossing Control Arm

2.12.1 Buses shall be equipped with a crossing control arm mounted on the right side of the front bumper. When opened, the arm shall extend in a line parallel to the body side and aligned with the right front wheels.

2.12.2 All components of the crossing control arm and all connections shall be weatherproofed.

2.12.3 The crossing control arm shall incorporate system connectors (electrical, vacuum, or air) at the gate and shall be easily removable to allow for towing of the bus.

2.12.4 The crossing control arm shall be constructed of non corrodible or nonferrous material, or treated in accordance with the body sheet metal standard (see "Metal Treatment", this section).

2.12.5 There shall be no sharp edges or projections that could cause injury or be a hazard to students. The end of the arm shall be rounded.

2.12.6 The crossing control arm shall extend minimum of 70 inches (measured from the bumper at the arm assembly attachment point) when in the extended position. The crossing control arm shall not extend past the end of the bumper when in the stowed position.

2.12.7 The crossing control arms shall extend simultaneously with the stop signal arm activated by stop signal arm controls.

2.12.8 An automatic recycling interrupt switch shall not be installed for temporarily disabling the crossing control arm.

2.12.9 The assembly shall include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. That device shall not interfere with normal operations of the crossing control arm.

## 2.13 Defrosters

2.13.1 Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow. (Exception: The requirements of this standard do not apply to the exterior surfaces of double pane storm windows.)

2.13.2 The defrosting system shall conform to SAE J381, Windshield Defrosting Systems Test Procedure and Performance Requirements Trucks, Buses, and Multipurpose Vehicles.

2.13.3 The defroster and defogging system shall be capable of furnishing heated, outside ambient air, except that the part of the system furnishing additional air to the windshield, entrance door and stepwell may be the recirculating air type.

2.13.4 Auxiliary fans are not considered defrosting or defogging systems and are described under "Ventilation", this section.

2.13.5 Portable heaters shall not be used.

## 2.14 Doors

2.14.1 The entrance door shall be under the driver's control, designed to afford easy release and to provide a positive latching device on manual operating doors to prevent accidental opening. When a hand lever is used, no part shall come together that will shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation, as tested on a 10 percent grade, both uphill and downhill.

2.14.2 The entrance door shall be located on the right side of the bus, opposite and within direct view of driver.

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2.14.3 The entrance door shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches.

2.14.4 The entrance door shall be a split type door and shall open outward.

2.14.5 The entrance door glass shall be approved safety glass. The bottom of each lower glass panel shall be not more than 10 inches from the top surface of the bottom step. The top of each upper glass panel shall be not more than 3 inches from the top of the door.

2.14.6 Vertical closing edges on entrance doors shall be equipped with flexible material.

2.14.7 All doors shall be equipped with padding at the top edge of the opening. Padding shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening.

2.14.8 On power operated entrance doors, the actuation switch shall be on or to the right of the steering wheel within reach of a seated 5<sup>th</sup> percentile female driver or integrated into the steering wheel.

2.14.9 The amber lights shall be controlled by a manual button located on the steering wheel or on the control panel to the right of the driver.

2.14.10 On power operated entrance doors, the emergency release valve, switch or device to release the entrance door must be placed above or to the immediate left or immediate right of the entrance door and must be clearly labeled.

### 2.15 Driver Compartment

#### 2.15.1 Driver Seat

2.15.1.1 The driver's seat supplied by the body manufacturer shall be a high back seat and have a cloth seating surface. It may have air suspension. The seat back shall be adjustable to 15 degrees minimum, without requiring the use of tools. The seat shall be equipped with a head restraint to accommodate a 5<sup>th</sup> percentile adult female to a 95<sup>th</sup> percentile adult male, as defined in FMVSS No. 208, Occupant Crash Protection.

2.15.1.2 Type A buses may utilize the standard driver's seat provided by the chassis manufacturer.

#### 2.15.2 Driver Restraint System

2.15.2.1 If available, an integrated Type 2 lap shoulder belt may be provided on Type C and D buses for the driver. If not available, the shoulder belt shall have a height adjuster.

2.15.2.2 The assembly shall be equipped with an emergency locking retractor for the continuous belt system. On all buses except Type A that are equipped with a standard chassis manufacturer's driver's seat, the lap portion of the belt system shall be guided or anchored to prevent the driver from sliding sideways under the belt system. The lap/shoulder belt shall be designed to allow for easy adjustment in order to fit properly and to effectively protect drivers varying in size from a 5<sup>th</sup> percentile adult female to 95<sup>th</sup> percentile adult male.

2.15.3 Each bus shall be equipped with a durable webbing cutter. The required belt cutter shall be mounted in a location accessible to the seated driver in an easily detachable manner.

### 2.16 Emergency Exits

2.16.1 Any installed emergency exit shall comply with the design and performance requirements of FMVSS No. 217, Bus Emergency Exits and Window Retention and Release, applicable to that type of exit, regardless of whether or not that exit is required by FMVSS No. 217.

#### 2.16.2 Emergency window requirements

2.16.2.1 The rear emergency window shall have a lifting assistance device that will aid in lifting and holding the rear emergency window open.

2.16.2.2 Side emergency exit windows shall be vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop arm.

#### 2.16.3 Emergency door requirements

2.16.3.1 The upper portion of the emergency door shall be equipped with approved safety glazing, the exposed area of which shall be at least 400 square inches. The lower portion of the rear emergency doors on Types A-2, B, C, and D vehicles shall be equipped with a minimum of 350 square inches of approved safety glazing.

2.16.3.2 There shall be no steps leading to an emergency door.

2.16.3.3 Padding shall be affixed to the top edge of each door opening. Padding shall be at least 3 inches wide and 1 inch thick and shall extend the full width of the door opening.

2.16.3.4 The side emergency door, if installed, shall have a clear aisle leading to it i.e., flip seats shall not be used.

2.16.3.5 There shall be no obstruction higher than 1/4 inch across the bottom of any emergency door opening.

2.16.3.6 The rear emergency window shall have an assisted lifting device that will aid in lifting and holding the rear emergency window open.

2.16.4 Emergency exit requirements: Types A, B, C, and D vehicles shall be equipped with a total number of emergency exits as follows for the equipped seating capacities of vehicles. Exits required by FMVSS 217 may be included to comprise the total number of exits specified.

1 to 42 Passenger = 1 emergency exit per side and 1 roof hatch.

43 to 78 Passenger = 2 emergency exits per side and 2 roof hatches.

79 to 90 Passenger = 3 emergency exits per side and 2 roof hatches.

2.16.5 In addition to the audible warning required on emergency doors by FMVSS 217, additional emergency exits shall also be equipped with an audible warning device.

## 2.17 Emergency Equipment

### 2.17.1 Fire Extinguisher

2.17.1.1 The bus shall be equipped with at least one UL approved pressurized, dry chemical fire extinguisher. The extinguisher shall be secured in a mounted bracket, located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher and shall be easily read without moving the extinguisher from its mounted position.

2.17.1.2 The fire extinguisher shall have a rating of 2-A:10-BC or greater. The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

### 2.17.2 First aid kit

2.17.2.1 The bus shall have a removable, moisture proof and dust proof first aid kit in an accessible place in the driver's compartment. It shall be mounted and identified as a first aid kit. The location for the first aid kit shall be marked.

#### 2.17.2.2

##### Units

2

3

3

2

##### Minimum contents include:

##### Quantity per unit

12- 1" x 3" adhesive bandages

2 - 2" bandage compress

1 - 4" bandage compress

1 - non sterile triangular bandages approximately 40" x 36" x 54" with

## 2 safety pins

2.17.3 Body fluid clean up kit: Each bus shall have a removable and moisture proof body fluid clean up kit accessible to the driver. It shall be mounted and identified as a body fluid clean up kit in the driver's compartment. Minimum contents of the body fluid clean up kit shall include the following:

2.17.3.1 1 16 oz. bottle of 70% rubbing alcohol or 10% solution of bleach

2.17.3.2 1 plastic trash bag with tie, minimum of 12" x 12"

2.17.3.3 2 pairs of medical examination gloves (non latex)

2.17.3.4 10 paper towels, approximately 10 1/2" x 12 1/2"

2.17.4 Warning devices: Each school bus shall contain at least 3 retroreflective triangle road warning devices that meet requirements in FMVSS No. 125, Warning Devices. They shall be mounted in an accessible place.

2.17.5 Any of the emergency equipment may be mounted in an enclosed compartment, provided the compartment is labeled in not less than 1 inch letters, identifying each piece of equipment contained therein.

2.17.6 Buses may be equipped with a fire suppression system. Fire suppression system nozzles shall be located in the engine compartment, under the bus, in the electrical panel or under the dash, but they shall not be located in the passenger compartment. The system must include a lamp or buzzer to alert the driver that the system has been activated.

## 2.18 Floors

2.18.1 The floor in the under seat area, including tops of wheel housings, driver's compartment and toeboard, shall be covered with an elastomer floor covering, having a minimum overall thickness of .125 inches and a calculated burn rate of 0.1 or less, using the test methods, procedures and formulas listed in FMVSS No. 302, Flammability of Interior Materials. The driver's area and toeboard area in all Type A buses may be manufacturer's standard flooring and floor covering.

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2.18.2 The floor covering in the aisles shall be ribbed or other raised pattern elastomer and have a calculated burn rate of .1 or less using the test methods, procedures and formulas listed in FMVSS No. 302. Minimum overall thickness shall be 3/16 inch measured from tops of ribs.

2.18.3 The floor covering must be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be a type recommended by the manufacturer of floor covering material. All seams shall be sealed with waterproof sealer.

2.18.4 On Types B, C and D buses, a flush mounted, screw down plate that is secured and sealed shall be provided to access the fuel tank sending unit and/or fuel pump. This plate shall not be installed under flooring material.

2.19 Handrails: At least one handrail shall be installed. The handrail(s) shall assist passengers during entry or exit, and shall be designed to prevent entanglement, as evidenced by the passage of the National Highway Transportation Safety Administration (NHTSA) string and nut test.

### 2.20 Heater and Air Conditioning Systems

#### 2.20.1 Heating System

2.20.1.1 The heater shall be a hot water type.

2.20.1.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.20.1.3 If only one heater is used, it shall be fresh air or combination fresh air and recirculation type.

2.20.1.4 If more than one heater is used, additional heaters may be recirculating air type.

2.20.1.5 The heating system shall be capable of maintaining bus interior temperatures, as specified in test procedure SAE J2233.

2.20.1.6 Auxiliary fuel fired heating systems are permitted, provided they comply with the following:

2.20.1.6.1 The auxiliary heating system shall utilize the same type fuel as specified for the vehicle engine:

2.20.1.6.2 The heater(s) shall be connected to the engine coolant system:

2.20.1.6.3 An auxiliary heating system when connected to the engine coolant system, may be used to preheat the engine coolant or preheat and add supplementary heat to the heating system:

2.20.1.6.4 Auxiliary heating systems must be installed pursuant to the manufacturer's recommendations and shall not direct exhaust in such a manner that will endanger bus passengers:

2.20.1.6.5 All combustion heaters shall be in compliance with current Federal Motor Carrier Safety Regulations:

2.20.1.6.6 The auxiliary heating system shall require low voltage; and

2.20.1.6.7 Auxiliary heating systems shall comply with FMVSS No. 301, Fuel System Integrity, and all other applicable FMVSSs, as well as with SAE test procedures.

2.20.1.7 All forced air heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMTC-001, Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.20.1.8 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE J20c, Coolant System Hoses. Heater lines on the interior of the bus shall be shielded to prevent scalding of the driver or passengers.

2.20.1.9 Each hot water system installed by a body manufacturer shall include one shut off valve in the pressure line and one shut off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.20.1.10 Each hot water heating system shall be equipped with a device installed in the hot water pressure line that regulates the water flow to all heaters. The device shall be located for convenient operation by the driver while seated.

2.20.1.11 Accessible bleeder valves for removing air from the heater shall be installed in an appropriate place in the return lines of body company installed heater.

2.20.1.12 Access panels shall be provided to make heater motors, cores and fans readily accessible for service. An exterior access panel to the driver's heater may be provided.

2.20.2 Air Conditioning

2.20.2.1 Performance Specifications

2.20.2.1.1 The installed air conditioning system shall cool the interior of the bus from 100 degrees to 80 degrees Fahrenheit, measured at three points (minimum), located four feet above the floor on the longitudinal centerline of the bus. The three required points shall be: (1) near the driver's location, (2) at the longitudinal midpoint of the body, and (3) two feet forward of the emergency door, or, for Type D rear engine buses, two feet forward of the end of the aisle.

2.20.2.1.2 The test conditions under which the above performance must be achieved shall consist of: (1) placing the bus in a room (such as a paint booth) where ambient temperature can be maintained at 100 degrees Fahrenheit; (2) heat soaking the bus at 100 degrees Fahrenheit with windows open for at least one hour; and (3) closing windows, turning on the air conditioner with the engine running at the chassis manufacturer's recommended low idle speed, and cooling the interior of the bus to 80 degrees Fahrenheit, or lower, within 30 minutes while maintaining 100 degrees Fahrenheit outside temperature.

2.20.2.1.3 Alternately, this test may be performed under actual summer conditions, which consist of temperatures above 85 degrees Fahrenheit, humidity above 50 percent with normal sun loading of the bus and the engine running at the engine manufacturer's recommended low idle speed. After a minimum of 1 hour of heat soaking, the system shall be turned on and must provide a minimum of a 20 degree temperature drop in the 30 minute time limit.

2.20.2.1.4 The manufacturer shall provide facilities for the user or user's representative to confirm that a pilot model of each bus design meets the above performance requirements.

2.20.2.2 Other Requirements

2.20.2.2.1 Evaporator cases, lines and ducting (as equipped) shall be designed in such a manner that all condensation is effectively drained to the exterior of the bus below the floor level under all conditions of vehicle movement and without leakage on any interior portion of bus.

2.20.2.2.2 Evaporators or ducting systems shall be designed and installed to be free of projections or sharp edges. Ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

2.20.2.2.3 Evaporator cases and ducting systems shall be equipped with diffusers that are adjustable.

2.20.2.2.4 Air intake for any evaporator assembly(ies), except for front evaporator of Type A-I, shall be equipped with replaceable air filter(s) accessible without disassembly of evaporator case.

2.20.2.2.5 On school buses equipped with Type 2 seatbelts having anchorages above the windows, the evaporator and ducting (if used) shall be placed at a height sufficient to not obstruct occupant securement anchorages. This clearance shall be provided along the entire length of the passenger area on both sides of the bus interior:

2.20.2.2.6 The condensers shall be equipped with a sight glass (or at least one for each part of a split system) that is accessible and directly visible for checking the level of the refrigerant.

2.20.2.2.7 The compressor system shall be equipped with both a high pressure and a low pressure switch to prevent compressor operation when system temperatures are above or below recommended safe levels. Lubrication of moving compressor parts shall be accomplished automatically. An automatic (electric) clutch shall be provided on each compressor.

2.20.2.2.8 All system operating controls, including on off switch(es), blower switch(es) and thermostat controls shall be within reach of a seated 5<sup>th</sup> percentile adult female driver.

2.20.2.2.9 Blowers shall be a minimum of two speeds.

2.20.2.2.10 Wiring shall be copper with color coded insulation. The air conditioning system shall be equipped with at least one manually resettable circuit breaker per side to provide overload protection for the main power circuit feeding the evaporator blowers and condenser fans. System control circuits shall also have overload protection, but may be fused.

2.20.2.2.11 Refrigerant shall be R 134A.

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2.20.2.2.12 All wiring, hoses, and lines shall be grommeted, routed, and supported so as to reduce wear. All flexible refrigerant hoses shall be double braided.

2.20.2.2.13 The body shall be equipped with insulation, including sidewalls, roof, firewall, rear, inside body bows and plywood (see "Insulation", this section) or composite floor insulation to reduce thermal transfer.

2.20.2.2.14 All glass shall be tinted (see "Windows", this section and "Special Service Entrance Door", section 3).

2.20.2.2.15 Type A buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 130 amperes. Type B, C, and D buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 200 amperes.

2.20.2.2.16 Roofs shall be painted white to aid in heat dissipation (see "Color", this section).

2.21 Hinges: All exterior metal door hinges shall be designed to allow lubrication to be channeled to the center 75% of each hinge loop without disassembly, unless they are constructed of stainless steel, brass or non metallic hinge pins or other designs that prevent corrosion.

## 2.22 Identification

2.22.1 The body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of the body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for Highway Signs. "SCHOOL BUS" lettering shall have a reflective background. It may not be illuminated by backlighting.

2.22.2 All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.22.3 Bus identification number shall be displayed on both sides, on the rear, and on the front.

2.22.4 District, company name or owner of the bus shall be displayed (letters 3 inch minimum to 6 inches maximum);

2.22.5 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.22.5.1 The location of the battery(ies) identified by the word "BATTERY" or "BATTERIES" on the battery compartment door in 2 inch lettering;

2.22.5.2 Symbols or letters not to exceed 64 square inches of total display near the service door, displaying information for identification by the students of the bus or route served;

2.22.5.3 Symbols identifying the bus as equipped for or transporting students with special needs (see Standards for Specially Equipped School Bus section);

2.22.5.4 Identification of fuel type in 2 inch lettering adjacent to the fuel filler opening;

and

2.22.5.5 Manufacturer, company name, dealer, or school logo may be displayed in the right side plate location on the rear of the bus.

2.23 Inside Height: Inside body height shall be 72 inches or more, measured metal to metal, at any point on longitudinal center line from the front vertical bow to the rear vertical bow. Inside body height of Type A-1 buses shall be 62 inches or more.

## 2.24 Insulation

2.24.1 If thermal insulation is specified, it shall be fire resistant, UL approved, with minimum R value of 5.5. Insulation shall be installed so as to prevent sagging.

2.24.2 If floor insulation is required, it shall be 5 ply softwood plywood, nominal 5/8 inch thickness, and shall equal to or exceed properties of the exterior type, C-D Grade, as specified in the standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-1 buses may be equipped with nominal 1/2 inch thick plywood or equivalent material meeting the above requirements. Equivalent material may be used to replace plywood, provided it has an equal or greater insulation R value, sound abatement, deterioration resistant and moisture resistant properties.

## 2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant handrails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed with lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be

beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See "Storage Compartment", this section)

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B.

2.25.4 School buses with a capacity of 36 passengers or greater shall be equipped with a sound proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.5 Buses shall have mar proof sidewalls.

2.25.6 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.6.1 Head protection requirements of FMVSS No. 222, School Bus Passenger Seating and Crash Protection, where applicable:

2.25.6.2 Have a maximum rated capacity displayed for each compartment:

2.25.6.3 Be completely enclosed and equipped with latching door (both door and latch sufficient to withstand a pushing force of 50 pounds applied at the center of the door);

2.25.6.4 Have all corners and edges rounded with a minimum radius of 1 inch or be padded equivalent to door header padding;

2.25.6.5 Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and

2.24.6.6 Have no protrusions greater than ¼ inch.

## 2.26 Lamps and Signals

2.26.1 Interior lamps which illuminate the aisle and stepwell shall be provided. The stepwell lamp shall be illuminated by an entrance door operated switch, to illuminate only when headlamps and clearance lights are on and the entrance door is open.

2.26.2 Body instrument panel lamps shall be controlled by an independent rheostat switch.

2.26.3 School bus alternately flashing signal lamps shall be provided:

2.26.3.1 The bus shall be equipped with two red lamps at the rear of vehicle and two red lamps at the front of the vehicle. Lamps may be the sealed beam, halogen type or Light Emitting Diode (LED).

2.26.3.1.1 Visors or hoods, black in color, are only required on non flush mounted lights and shall have a minimum depth of 4 inches.

2.26.3.2 In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at same level, but closer to the vertical centerline of bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually. The red lamps are automatically energized and amber lamps are automatically de energized when stop signal arms are extended or when bus entrance door is opened. An amber pilot lamp and a red pilot lamp shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

2.26.3.3 The area around lens of alternately flashing signal lamps extending outward from the edge of the lamps 1-3 inches to the sides and top and 1" to the bottom, shall be black in color on the body or roof area against which the signal lamp is seen.

2.26.3.4 Red lamps on the stop signal arm shall flash at any time the arm is extended.

2.26.3.5 All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

2.26.4 Turn signal and stop tail lamps:

2.26.4.1 The bus body shall be equipped with amber rear turn signal lamps that are at least 7 inches in diameter or if the shape is other than round, a minimum 38 square inches of illuminated area and shall meet FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their horizontal centerline shall be a maximum of 12 inches below the rear window. Type A-1 conversion vehicle lamps must be at least 21 square inches in lens area and must be in the manufacturer's standard color.

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2.26.4.2 Buses shall be equipped with amber side mounted turn signal lamps. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm and the turn signal lamp on the right side shall be mounted rearward of the entrance door. An additional side turn signal lamp shall be mounted between the rear wheel opening and the rear of the bus on both sides.

2.26.4.3 In addition to manufacturer's standard turn signals, Type C school buses shall be equipped with front, Class A fender or hood mounted turn signals.

2.26.4.4 Buses shall be equipped with four combination red stop tail lamps:

2.26.4.4.1 Two combination lamps with a minimum diameter of 7 inches, or if a shape other than round, a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus just inside the turn signal lamps.

2.26.4.4.2 Two combination lamps with a minimum diameter of 4 inches, or if a shape other than round, a minimum 12 square inches of illuminated area, shall be placed on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 buses with bodies supplied by chassis manufacturer may be equipped with the manufacturer's standard stop and tail lamps.

2.26.4.5 All buses shall be equipped with a 16 light monitor. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse, circuit breaker, or field effect transistor to protect against any short circuit or intermittent shorts by a fuse, circuit breaker or electronic protection device.

2.26.4.6 Body markers shall be the armored type.

2.26.4.7 Backup lamps: The bus body shall be equipped with two white rear backup lamps that are at least 4 inches in diameter or, if a shape other than round, a minimum of 12 square inches of illuminated area and shall meet FMVSS No. 108. If backup lamps are placed on the same horizontal line as the brake lamps and turn signal lamps, they shall be to the inside.

2.26.5 School buses may be equipped with fog lamps.

## 2.27 Metal Treatment

2.27.1 All metal except high grade stainless steel or aluminum used in construction of the bus body shall be zinc coated or aluminum coated or treated to prevent corrosion. This includes but is not limited to such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

2.27.2 All metal parts that will be painted, in addition to the above requirements, shall be chemically cleaned, etched, zinc phosphate coated and zinc chromate or epoxy primed to improve paint adhesion.

2.27.3 In providing for these requirements, particular attention shall be given to lapped surfaces, welded connections of structural members, cut edges on punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation.

2.27.4 As evidence that above requirements have been met, samples of materials and sections used in the construction of the bus body shall not lose more than 10 percent of material by weight when subjected to a 1000 hour salt spray test as provided for in latest revision of ASTM Standard B-117.

## 2.28 Mirrors

2.28.1 The interior glass mirror shall be either laminated or tempered and shall have rounded corners and protected edges. Mirrors shall be 6 inches x 16 inches for Types A and B buses and be 6 inches x 30 inches for Types C and D buses.

2.28.2 Each school bus shall be equipped with exterior mirrors meeting the requirements of FMVSS No. 111, Rearview Mirrors. The right side rear view mirror shall not be obscured by the unwiped portion of the windshield. Mirrors shall be easily adjustable, but shall be rigidly braced, so as to reduce vibration.

2.28.3 All buses shall be equipped with heated and remote controlled exterior rear view mirrors and heated cross over mirrors.

## 2.29 Mounting

2.29.1 The rear body cross member shall be supported by the chassis frame. Except where chassis components interfere, the bus body shall be attached to the chassis frame at each main floor sill in such a manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

2.29.2 Insulators shall be installed at all contact points between the body and the chassis frame on Types A-2, B, C, and D buses, and shall be secured by a positive means to the chassis frame or body to prevent shifting, separation, or displacement of the isolators under severe operating conditions.

2.30 Overall Length: Overall length of bus shall not exceed 40 feet, excluding accessories.

2.31 Overall Width: Overall width of bus shall not exceed 96 inches, excluding accessories.

2.32 Public Address System:

2.32.1 There shall be installed a public address amplifier specifically designed for vehicular applications with a minimum power output of not less than 5 watts sine wave power. Such system shall consist of an on off switch, volume control, and an inside outside speaker selector switch. Additionally, it shall have an outside speaker completely weather proofed a minimum 7 watt power capability and two interior dynamic speakers with a minimum diameter of 4 inches. These speakers shall be located above the window line, to the rear of the driver, and shall not project more than 1/2 inch from the interlining of the bus. There shall be no sharp edges or corners that could cause injury to a passenger. The outside speaker shall be located on the front of the cowl under the hood or other suitable location under the hood.

2.32.2 Buses may be equipped with an AM/FM audio system.

2.32.3 No internal speakers, other than the driver's communication systems, may be installed within 4' of the driver's seat back in its rearmost upright position.

2.33 Retroreflective Material, Reflexite or Diamond grade or equivalent (see NSTSP, Appendices A and B, Retroreflective Sheeting)

2.33.1 The front and rear bumper may be marked diagonally 45 degrees down to centerline of pavement with 2 inches + ¼ inch wide strips of non contrasting reflective material.

2.33.2 The rear of the bus body shall be marked with strips of retroreflective NSBY material to outline the perimeter of the back of the bus using material which conforms to the requirements of FMVSS No. 131, School Bus Pedestrian Safety Devices, Table 1. The perimeter marking of rear emergency exits per FMVSS No. 217, Bus Emergency Exits and Window Retention and Release, and/or the use of retroreflective "SCHOOL BUS" signs partially accomplishes the objective of this requirement. To complete the perimeter marking of the back of the bus, strips of at least 1 ¾ inch retroreflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter, marking outward to the left and right rear corners of the bus. Vertical strips shall be applied at the corners connecting these horizontal strips.

2.33.3 "SCHOOL BUS" signs shall be marked with retroreflective NSBY material comprising background for lettering of the front and/or rear "School BUS" signs.

2.33.4 Sides of bus body shall be marked with at least 1 ¾ inch retro reflective NSBY material, extending the length of the bus body and located (vertically) between the floor line and the beltline.

2.34 Rub Rails

2.34.1 There shall be three rub rails on each side of the bus. One shall be located at or no more than 8 inches above the seat cushion level. The second shall be just below the window line. The third shall be located 10 inches or less above the floor line. This rub rail shall cover the same longitudinal span as the upper rub rails except at the wheelhousing. All rub rails shall extend the length of the left side and on the right side from the rear side of the entrance door to the rear of the bus.

2.34.2 Two of the three rub rails shall wrap around the bus body (except at the emergency door or any maintenance access door).

2.34.3 There shall be a snow (rub) rail at the bottom edge of the body side skirts.

2.34.4 Rub rails above the floor line shall be attached at each body post and at all other upright structural members.

2.34.5 Each rub rail shall be 4 inches or more in width in its finished form and shall be constructed of 16 gauge steel or other material of equivalent strength suitable to help protect body side panels from damage. Rub rails shall be constructed in corrugated or ribbed fashion.

2.34.6 Rub rails shall be applied outside the body or outside the body posts. (Pressed in or snap on rub rails do not satisfy this requirement.) For Type A-1 vehicles using the body provided by the chassis manufacturer, or for Types A-2, B, C and D buses containing the rear luggage or the rear engine compartment, rub rails need not extend around the rear corners.

2.35 Seat and Restraining Barriers

2.35.1 Passenger Seating

2.35.1.1 School bus design capacities shall be in accordance with 49 CFR, Part 571.3, Definitions, and FMVSS No. 222, School Bus Passenger Seating and Crash Protection.

2.35.1.2 All seats shall have a minimum cushion depth of 15 inches, a seat back height of 20 inches above the seating reference point, and must comply with all other requirements of FMVSS No. 222. In

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addition to the fastener that forms the pivot for each seat retaining clip, a secondary fastener may be used in each clip to prevent the clip from rotating and releasing the seat cushion unintentionally.

2.35.1.3 All restraining barriers and passenger seats shall be constructed with materials that enable them to meet the criteria of the School Bus Seats Upholstery Fire Block Test.

2.35.1.4 School buses equipped with front barriers shall have modesty panels to the floor between the barrier leg and the side of the bus.

2.35.1.5 Each seat leg shall be secured to the floor by a minimum of two (2) bolts, washers, and nuts. Flange head nuts may be used in lieu of nuts and washers, or seats may be track mounted in conformance with FMVSS No. 222. If track seating is installed, the manufacturer shall supply minimum and maximum seat spacing dimensions (applicable to the bus) which comply with FMVSS No. 222. This information shall be on a label permanently affixed to the bus.

2.35.1.6 All seat frames attached to the seat rail shall be fastened with two or more bolts, washers and nuts, or flange head nuts.

2.35.1.7 All school buses (including Type A) shall be equipped with restraining barriers which conform to FMVSS No. 222.

2.35.1.8 There shall be a minimum of 8" clearance between the last seat and the rear interior of the bus.

2.35.1.9 Flip seats shall not be used.

2.35.1.10 Lap belts shall not be installed on passenger seats in large school buses (over 10,000 pounds GVWR) except in conjunction with child safety restraint systems that comply with the requirements of FMVSS No. 213, Child Restraint Systems.

2.35.1.11 An electrical child reminder system may be installed to assist the driver in checking for students left on board the bus.

2.35.2 Preschool Age Seating: Passenger seats designed to accommodate a child or infant carrier seat shall comply with FMVSS No. 225, Child Restraint Anchorage Systems. These seats shall be in compliance with NHTSA's "Guideline for the Safe Transportation of Preschool Age Children in School Buses." (Note: See 2.35.1.10 above.) There shall be at least 27 inches, measured at seat cushion level between the back of the seat back or barrier and the front of the seat back of the next seat to the rear.

2.36 Side Skirts: Side body panels and skirt shall be a maximum of 46 to 47 inches measured from the bottom of the window line to the bottom of the snow rail, unless the standard side skirt is at the center of the axles. This does not apply to buses with side body storage compartments.

### 2.37 Steps

2.37.1 All school buses with a capacity of 36 passengers and above shall have a three step stepwell.

2.37.2 The first step the entrance door shall be not less than 10 inches and not more than 14 inches from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door shall be 12 inches to 16 inches from the ground.

2.37.3 Step risers shall not exceed a height of 10 inches. Exception: When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

2.37.4 Steps shall be enclosed to prevent accumulation of ice and snow.

2.37.5 Steps shall not protrude beyond the side body line.

### 2.38 Step Treads

2.38.1 All steps, including floor line platform area, shall be covered with an elastomer floor covering having a minimum overall thickness of .187 inch.

2.38.2 The step covering shall be permanently bonded to a durable backing material that is resistant to corrosion.

2.38.3 Steps, including the floor line platform area, shall have a 1 ½ inch white nosing.

2.38.4 Step treads shall have the following characteristics:

2.38.4.1 Abrasion resistance: Step tread material weight loss shall not exceed 0.40 percent, as tested under ASTM D-4060, Standard Test Method for Abrasion Resistance of Organic Coatings by the Taber Abraser, (CS-17 Wheel, 1000 gram, 1000 cycle):

2.38.4.2 Weathering resistance: Step treads shall not break, crack, or check after ozone exposure (7 days at 50 phm at 40 degrees C) and Weatherometer exposure (ASTM D-750, Standard Test Method for Rubber Deterioration in Carbon Arc Weathering Apparatus, 7 days);and

2.38.4.3 Flame Resistance: Step treads shall have a calculated burn rate of .01 or less using the test methods, procedures and formulas listed in FMVSS No. 302, Flammability of Interior Materials.

2.39 Stirrup Steps: If the windshield and lamps are not easily accessible from the ground, there shall be at least one folding stirrup step or recessed foothold installed on each side of the front of the body for easy accessibility for cleaning. There also may be a grab handle installed in conjunction with the step. Steps are permitted in or on the front bumper in lieu of the stirrup steps if the windshield and lamps are easily accessible for cleaning from that position.

2.40 Stop Signal Arm: The stop signal arm comply with the requirements of FMVSS No. 131, School Bus Pedestrian Safety Devices.

2.41 Storage Compartment: A storage container for tools, tire chains, and/or other equipment may be located either inside or outside the passenger compartment. If inside, it shall be fastened to the floor and have a cover with a positive fastening device.

2.42 Strobe Lamp

2.42.1 A white flashing strobe lamp shall be installed on the roof of the bus. It shall be located from 4 to 6 feet from the rear of the roof edge (except air conditioned buses with rooftop evaporators), within 1 foot of centerline, and behind all other roof equipment. The lamp shall extend above the roof between 4 ½ to 6 ¾ inches, and the light shall be 12 to 16 joules. The lamp shall have a single clear lens emitting light 360 degrees around its vertical axis.

2.42.2 The light shall be wired to activate when the amber alternately flashing signal lamps are activated, continuing through the full loading or unloading cycle, with an override switch to allow activation of the strobe lamp anytime for use in inclement weather.

2.42.3 A separate pilot lamp on the light switch panel or a pilot lamp in the strobe light switch shall be installed to indicate when the light is in operation.

2.43 Sun Shield

2.43.1 For Types B, C, and D buses, an interior adjustable transparent sun shield with a finished edge and dimensions not less than 6 inches X 30 inches, shall be installed in a position convenient for use by driver.

2.43.2 On all Type A buses, the sun shield (visor) shall be installed by the chassis manufacturer.

2.44 Traction Assisting Devices

2.44.1 Where required or used, sanders shall:

2.44.1.1 Be of hopper cartridge valve type;

2.44.1.2 Have a metal hopper with all interior surfaces treated to prevent condensation of moisture;

2.44.1.3 Have at least 100 pound (grit) capacity;

2.44.1.4 Have a cover that screws in place on the filler opening of the hopper, thereby sealing the unit airtight;

2.44.1.5 Have discharge tubes extending under the fender wheelhousing to the front of each rear wheel;

2.44.1.6 Have non clogging discharge tubes with slush proof, non freezing rubber nozzles;

2.44.1.7 Be operated by an electric switch with a pilot lamp mounted on the instrument panel located so as to be exclusively controlled by the driver;

2.44.1.8 Be equipped with a gauge to indicate that the hopper has reached the one quarter level (and needs to be refilled); and

2.44.1.9 Be designed to prevent freezing of all activation components and moving parts.

2.44.2 Automatic traction chains may be installed.

2.45 Trash Container and Holding Device: A trash container shall may be provided and secured by a holding device that is designed to prevent movement and to allow easy removal and replacement. It shall be installed in an accessible location in the driver's compartment, not obstructing passenger access to the entrance door.

2.46 Undercoating

2.46.1 The entire underside of bus body, including floor sections, cross member and below floor line side panels, shall be coated with rust proofing material for which the material manufacturer has issued to the bus body manufacturer a notarized certification that materials meet or exceed all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b, Coating Compound, Bituminous, Solvent Type, Underbody (For Motor Vehicles), using modified test procedures\* for the following requirements:

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- 2.46.1.1 Salt spray resistance test modified to 5% salt and 1000 hours;
- 2.46.1.2 Abrasion resistance; and
- 2.46.1.3 Fire resistance.

\*Test panels are to be prepared in accordance with paragraph 4.6.12 of TT-C-520b with modified procedure requiring that the test be made on a 48 hour air cured film at a thickness recommended by the material manufacturer.

2.46.2 The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in cured film.

## 2.47 Ventilation

2.47.1 Auxiliary fans (2) shall meet the following requirements.

2.47.1.1 Fans for left and right sides of the windshield shall be placed in a location where they can be adjusted for maximum effectiveness and where they do not obstruct vision to any mirror. Note: Type A buses may be equipped with one fan.

2.47.1.2 Fans shall have 6 inch (nominal) diameter; and

2.47.1.3 Fan blades shall be enclosed in a protective cage. Each fan shall be controlled by a separate switch.

2.47.2 The bus body shall be equipped with a suitably controlled ventilating system of sufficient capacity to maintain proper quantity of air flow under operating conditions without having to open a window except in extremely warm weather.

2.47.3 Static type, non closeable exhaust ventilation shall be installed in a low pressure area of the roof.

2.47.4 Roof hatches designed to provide ventilation in all types of exterior conditions may be provided.

## 2.48 Wheelhousing

2.48.1 The wheelhousing opening shall allow for easy tire removal and service.

2.48.2 Wheel housings shall be attached to the floor sheets in a manner to prevent any dust, water or fumes from entering the body. Wheel housings shall be constructed of 16 gauge steel (or thicker) steel.

2.48.3 The inside height of the wheel housings above the floor line shall not exceed 12 inches.

2.48.4 The wheel housings shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power driving wheels.

2.48.5 No part of a raised wheelhousing shall extend into the emergency door opening.

## 2.49 Windows

2.49.1 Other than emergency exits designed to comply with FMVSS No. 217, Bus Emergency Exits and Window Retention and Release, each side window shall provide an unobstructed opening of at least 9 inches high (but not more than 13 inches high) and at least 22 inches wide, obtained by lowering the window. One side window on each side of the bus may be less than 22 inches wide.

2.49.2 All glass may be equipped with maximum integral tinting allowed by federal or ANSI standards for the respective locations. However, the tinting in the rear windows and door shall not exceed the tinting allowed for the windshield.

2.50 Windshield Washers: A windshield washer system shall be provided.

## 2.51 Windshield Wipers

2.51.1 A variable speed windshield wiping system with an intermittent feature, shall be provided and shall be operated by a single switch.

2.51.2 The wipers shall meet the requirements of FMVSS No. 104, Windshield Wiping and Washing Systems.

## 2.52 Wiring

### 2.52.1 Wiring

2.52.1.1 All wiring shall conform to current SAE standards.

2.52.1.2 All wiring shall have an amperage capacity exceeding the design load by at least 25%. All wiring splices are to be accessible and noted as splices on the wiring diagram.

2.52.1.3 A body wiring diagram, sized to be easily read, shall be furnished with each bus body or affixed to an area convenient to the electrical accessory control panel.

2.52.1.4 The body power wire shall be attached to a special terminal on the chassis.

2.52.1.5 Each wire passing through metal openings shall be protected by a grommet.

2.52.1.6 Wires not enclosed within the body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors, which shall be water resistant and corrosion resistant

2.52.2 Circuits:

2.52.2.1 Wiring shall be arranged in circuits, as required, with each circuit protected by a fuse, breaker or electronic protection device. A system of color and number coding shall be used and an appropriate identifying diagram shall be provided to the end user, along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams shall be specific to the bus model supplied and shall include any changes to wiring made by the body manufacturer. Chassis wiring diagrams shall be supplied to the end user. The following body interconnecting circuits shall be color coded as noted:

FUNCTION COLOR

Left Rear Directional Lamp Yellow

Right Rear Directional Lamp Dark Green

Stop Lamps Red

Back up Lamps Blue

Tail Lamps Brown

Ground White

Ignition Feed, Primary Feed Black

The color of cables shall correspond to SAE J 1128, Low Tension Primary

Cable.

2.52.2.2 Wiring shall be arranged in at least six regular circuits, as follows:

2.52.2.2.1 Head, tail, stop (brake) and instrument panel lamps;

2.52.2.2.2 Clearance lamps and stepwell lamps that shall be actuated when entrance door is open;

2.52.2.2.3 Dome lamps;

2.52.2.2.4 Ignition and emergency door signal;

2.52.2.2.5 Turn signal lamps; and

2.52.2.2.6 Alternately flashing signal lamps.

2.52.2.3 Any of the above combination circuits may be subdivided into additional independent circuits.

2.52.2.4 Heaters and defrosters shall be wired on an independent circuit.

2.52.2.5 Whenever possible, all other electrical functions (such as sanders and electric type windshield wipers) shall be provided with independent and properly protected circuits.

2.52.2.6 Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in a readily accessible location.

2.52.3 The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

2.52.4 Buses shall be equipped with a 12 volt power port in the driver compartment.

2.52.5 There shall be a manual noise suppression switch installed in the control panel. The switch shall be labeled and alternately colored. This switch shall be an on/off type that deactivates body equipment that produces noise, including, at least, the AM/FM radio, heaters, air conditioners, fans and defrosters. This switch shall not deactivate safety systems, such as windshield wipers or lighting systems.

2.52.6 The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

### **3.0 Standards for Specially Equipped School Buses**

#### 3.1 General Requirements

3.1.1 Specially equipped school buses shall comply with these standards and with FMVSSs applicable to their GVWR category.

3.1.2 Any school bus to be used for the transportation of children who utilize a wheelchair or other mobile positioning device, or who require life support equipment that prohibits use of the regular service entrance, shall be equipped with a power lift, unless a ramp is needed for unusual circumstances related to passenger needs.

3.1.3 Lift buses (48-60 passengers only) shall have flat floors.

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## PROPOSED REGULATIONS

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3.1.4 Padded barriers shall be installed to protect wheelchair positions where seating does not interface as barrier.

3.1.5 Seats shall have the minimum spacing specified under FMVSS No. 222 School Bus Passenger Seating and Crash Protection per NHTSA February 1999 Guideline for the Safe Transportation of PreSchool Age Children in School Buses. There shall be at least 27 inches, measured at seat cushion level between the back of the seat back or barrier and the front of the seat back of the next seat to the rear.

3.1.6 All seats shall have seat belts installed (39 inch seats shall have 3 lap belts and 30 inch seats shall have 2 lap belts).

3.2 Aisles: All school buses equipped with a power lift shall provide a minimum 30 inch aisle leading from any wheelchair position to at least one emergency exit door. A wheelchair securement position shall never be located directly in front of (blocking) a power lift door location.

3.3 Glazing: Tinted glazing may be installed in all doors, windows and windshields (see "Windows", section 2 and "Special Service Entrance Door", this section).

3.4 Handrails: Two handrails (at the front and rear of the stepwell) shall be provided to assist passengers during entry or exit, and shall be designed to prevent entanglement, as evidenced by the passage of the National Highway Traffic Safety Administration (NHTSA) string and nut test. (See 49 CFR 571.403, S6.4.9, Handrails)

3.5 Identification: Specially equipped school buses shall display the International Symbol of Accessibility below the window line. Such emblems shall be white on blue or black background, shall not exceed 12 inches square in size and shall be of a high intensity retroreflective material meeting the requirements of Federal Highway Administration (FHWA) FP-85, Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects.

3.6 Passenger Capacity Rating: In determining the passenger capacity of a school bus for purposes other than actual passenger load (e.g., vehicle classification or various billing/reimbursement models), any location in a school bus intended for securement of a wheelchair during vehicle operations shall be regarded as four designated seating positions, and each lift area shall count as four designated seating positions.

### 3.7 Power Lifts and Ramps

3.7.1 The power lift shall be located on the right side of the bus body.

3.7.1.1 A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR §1192.23, Vehicle ramp.

3.7.1.2 A ramp device which does not meet the specifications of ADA, but does meet the specifications of paragraph 3.7.3 of this section, may be installed and used, when, and only when, a power lift system is not adequate to load and unload students having special and unique needs. A readily accessible ramp may be installed for emergency exit use. If stowed in the passenger compartment, the ramp must be properly secured and placed away from general passenger contact. It must not obstruct or restrict any aisle or exit while in its stowed or deployed position.

3.7.1.3 All specially equipped school buses shall provide a level change mechanism or boarding device (e.g., lift or ramp), complying with paragraphs 3.7.2 or 3.7.3 of this section, with sufficient clearances to permit a wheelchair user to reach a securement location.

### 3.7.2 Vehicle lift and installation

3.7.2.1 General: Vehicle lifts and installations shall comply with the requirements set forth in FMVSS No. 403, Platform Lift Systems for Motor Vehicles, and FMVSS No. 404, Platform Lift Installations in Motor Vehicles. For lifts located at the rear of the bus, the power unit for the lift shall be located forward of the lift with controls secured to the interior of the lift door. For lifts located at the forward of the bus, the power unit for the lift shall be located rearward of the lift with controls secured to the interior of the lift door.

3.7.2.2 Design loads. The design load of the lift shall be at least 800 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Non working parts, such as platform, frame, and attachment hardware that would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

3.7.2.3 Lift capacity: The lifting mechanism and platform shall be capable of operating effectively with a wheelchair and occupant mass of at least 800 pounds.

3.7.2.4 Controls: (See 49 CFR 571.403, S6.7, Control systems.)

3.7.2.5 Emergency operations: (See 49 CFR 571.403, S6.9, Backup operation.)

3.7.2.6 Power or equipment failures: (See 49 CFR 571.403, S6.2.2, Maximum platform velocity.)

3.7.2.7 Platform barriers: (See 49 CFR 571.403, S6.4.7, Wheelchair retention.)

3.7.2.8 Platform surface: (See 49 CFR 571.403, S6.4.2, S6.4.3, Platform requirements.) (See also "Wheelchair or Mobility Aid Envelope" figure in the NSTSP, Specially Equipped School Bus Specifications.) The platform shall have a minimum clear width of 32 inches measured from two inches above the platform surface to 30 inches above the surface of the platform, and a minimum clear length of 48 inches measured from two inches above the surface of the platform to 30 inches above the surface of the platform.

3.7.2.9 Platform gaps and entrance ramps: (See 49 CFR 571.403, S6.4.4, Gaps, transitions and openings.)

3.7.2.10 Platform deflection: (See 49 CFR 571.403, S6.4.5, Platform deflection.)

3.7.2.11 Platform movement: (See 49 CFR 571.403, S6.2.3, Maximum platform acceleration.)

3.7.2.12 Boarding direction: The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

3.7.2.13 Circuit breaker: A resettable circuit breaker shall be installed between the power source and lift motor if electrical power is used. It shall be located as close to the power source as possible, but not within the passenger/driver compartment.

3.7.2.14 Excessive pressure: (See 49 CFR 571.403, S6.8, Jacking prevention.)

3.7.2.15 Documentation: The following information shall be provided with each vehicle equipped with a lift:

3.7.2.15.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request.)

3.7.2.15.2 Detailed instructions regarding use of the lift and readily visible when the lift door is open, including a diagram showing the proper placement and positioning of wheelchair mobility aids on the lift.

3.7.2.16 Training materials: The lift manufacturer shall make training materials available to ensure the proper use and maintenance of the lift. These may include instructional videos, classroom curriculum, system test results or other related materials.

3.7.2.17 Identification and certification: Each lift shall be permanently and legibly marked or shall incorporate a non removable label or tag that states it conforms to all applicable requirements of the NSTSP. In addition and upon request of the original titled purchaser, the lift manufacturer or an authorized representative shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the lift system meets all the applicable requirements of the current NSTSP.

### 3.7.3 Vehicle ramp

3.7.3.1 If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep special device on the ramp.

3.7.3.2 The surface of the ramp shall be constructed of non skid material.

3.7.3.3 The ramp shall be equipped with handles and shall be of weight and design to permit one person to put ramp in place and return it to its storage place.

3.7.3.4 Ramps used for emergency evacuation purposes may be installed in raised floor buses by manufacturers. They shall not be installed as a substitute for a lift when a lift is capable of serving the need.

3.8 Regular Service Entrance: On power lift equipped vehicles, steps shall be the full width of the step well, excluding the thickness of doors in the open position.

### 3.9 Restraining Devices

3.9.1 On power lift equipped vehicles with a GVWR of 10,000 pounds or more, seat frames may be equipped with attachment points to which belt assemblies can be attached for use with Child Safety Restraint Systems (CSRSs) that comply with FMVSS No. 213, Child Restraint Systems. Any belt assembly anchorage shall comply with FMVSS No. 210, Seat Belt Assembly Anchorages.

3.9.2 Alternatively, a child restraint anchorage system that complies with FMVSS No. 225, Child Restraint Anchorage Systems, may be installed.

3.9.3 Seat belt assemblies, if installed, shall conform to FMVSS No. 209, Seat Belt Assemblies.

## PROPOSED REGULATIONS

3.9.4 Child safety restraint systems, which are used to facilitate the transportation of children who in other modes of transportation would be required to use a child, infant, or booster seat, shall conform to FMVSS No. 213.

3.10 Seating Arrangements: Flexibility in seat spacing to accommodate special devices shall be permitted to meet passenger requirements. All seating (forward facing) shall meet the requirements of FMVSS No. 222, School Bus Passenger Seating and Crash Protection.

3.11 Securement and Restraint System for Wheelchair or Mobility Aid and Occupants: For purposes of understanding the various aspects and components of this section, the term securement and tiedown and the phrases securement system or tiedown system are used exclusively in reference to the devices that anchor the wheelchair to the vehicle. The term restraint and the phrase restraint system are used exclusively in reference to the equipment that is intended to limit the movement of the wheelchair occupant in a crash or sudden maneuver. The term wheelchair tiedown and occupant restraint system (WTORS) is used to refer to the total system that secures the wheelchair and restrains the wheelchair occupant.

3.11.1 WTORS general requirements

3.11.1.1 A self tightening wheel chair tiedown and self retracting adjustable height shoulder lap belt assembly shall be installed on specially equipped school buses. They shall be designed, installed and operated for use with forward facing wheel chair seated passengers within the bus and shall comply with all applicable requirements of FMVSS No. 222, School Bus Passenger Seating and Crash Protection, and SAE J2249, Wheelchair Tiedown and Occupant Restraint Systems for Use in Motor Vehicles.

3.11.1.2 WTORS, including the anchorage track, floor plates, pockets or other anchorages, shall be provided by the same manufacturer, or shall be certified to be compatible by manufacturers of all equipment systems used.

3.11.1.3 Wheelchair securement positions shall be located such that wheelchairs and their occupants do not block access to the lift door.

3.11.1.4 A device for storage of the WTORS shall be provided. When the system is not in use, the storage device shall allow for clean storage of the system, shall keep the system securely contained within the passenger compartment, shall provide reasonable protection from vandalism and shall enable the system to be readily accessed for use.

3.11.1.5 The WTORS, including the storage device, shall meet the flammability standards established in FMVSS No. 302, Flammability of Interior Materials.

3.11.1.6 The following information shall be provided with each vehicle equipped with a securement and restraint system:

3.11.1.6.1 A phone number where information can be obtained about installation, repair and parts. (Detailed written instructions and a parts list shall be available upon request.)

3.11.1.6.2 Detailed instructions regarding use, including a diagram showing the proper placement of the wheelchair mobility aids and positioning of securement devices and occupant restraints, including correct belt angles. 3.11.1.7 The WTORS manufacturer shall make training materials available to ensure the proper use and maintenance of the WTORS. These may include instructional videos, classroom curriculum, system test results or other related materials.

3.11.2 Wheelchair Securement Tiedown: (See 49 CFR 571.403, S5.4.1, S5.4.2.)

3.11.2.1 Each wheelchair position in a specially equipped school bus shall have a minimum clear floor area of 30 inches laterally by 52 inches longitudinally. Additional floor area may be required for some wheelchairs. Consultation between the user and the manufacturer is recommended to ensure that adequate area is provided.

3.11.3 Occupant Restraint System (See 49 CFR 571.403, S5.4.3, S5.4.4.)

3.12 Special Light: Doorways in which lifts are installed shall be equipped with a special light that provides a minimum of 2 foot candles of illumination measured on the floor of the bus immediately adjacent to the lift and on the lift during lift operation.

3.13 Special Service Entrance

3.13.1 Power lift equipped bodies shall have a special service entrance to accommodate the power lift.

Exception: A special service entrance shall not be required if the lift is designed to operate within the regular service entrance, is capable of stowing such that the regular service entrance is not blocked in any way and a person entering or exiting the bus is not impeded in any way.

3.13.2 The special service entrance and door shall be located on the right side of the bus and shall be designed so as not to obstruct the regular service entrance.

3.13.3 The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings.

3.13.4 A drip molding shall be installed above the special service entrance to effectively divert water from the entrance.

3.13.5 Door posts and headers at the special service entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for special service entrance.

3.14 Special Service Entrance Door

3.14.1 A single door shall be used for the special service entrance. They shall have rub rails.

3.14.2 There shall be a 57" door height opening.

3.14.3 The door shall be hinged to the forward side of the entrance unless this would obstruct the regular service entrance. If the door is hinged to the rearward side of the doorway, the door shall utilize a safety mechanism which will prevent the door from swinging open should the primary door latch fail.

3.14.4 The door shall have positive fastening devices to hold doors in the "open" position when the special service entrance is in use.

3.14.5 The door shall be weather sealed.

3.14.6 Door materials, panels and structural components shall have strength equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

3.14.7 The door shall have windows set in a waterproof manner that are visually similar in size and location to adjacent non door windows. Glazing shall be of same type and tinting as standard fixed glass in the side windows.

3.14.8 The door shall be equipped with a device that will actuate an audible or visible signal located in the driver's compartment when the door is not securely closed and the ignition is in "on" position.

3.14.9 A switch shall be installed so that the lift mechanism will not operate when the lift platform door is closed.

3.14.10 The special service entrance door shall be equipped with padding at the top edge of the door opening. The padding shall be at least 3 inches wide and 1 inch thick and shall extend the full width of the door opening.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### DRA 2005 Income First Rule

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to amend the Division of Social Services Manual (DSSM) regarding Section 6013 of the Deficit Reduction Act (DRA) of 2005 requiring all states follow the "Income First" rule.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2006.

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 PROPOSAL

#### **Statutory Authority**

Section 1924 of the Social Security Act (42 U.S.C. 1396r-5(d)), as amended by the Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

#### **Background**

When one spouse enters a long-term care facility and the other remains in the community, the Division of Medicaid and Medical Assistance (DMMA) makes an attribution of the couple's financial resources to allocate the amount of resources to be protected for the community spouse. If the couple believes that the amount of protected resources will not generate enough income for the community spouse, the couple can appeal the attribution decision. The amendment to the Division of Social Services Manual (DSSM) codifies the way income is considered for the appeal decision on whether to protect a higher amount of resources.

The Deficit Reduction Act (DRA) of 2005, Section 6013 amends the Federal Medicaid statute to require the application of "Income First" rule in applying community spouse's income before assets in providing support of the community spouse.

Section 6013 mandates that the State must consider all income of the institutionalized spouse that can be allocated to the community spouse, in order to bring the community spouse's income up to the minimum monthly maintenance needs allowance (MMMNA), before raising the community spouse's resource allowance to adequately provide for that income.

This mandate of the income first rule applies to transfers and allocations made on or after the date of enactment by individuals who become institutionalized spouses on or after such date.

#### **Summary of Proposed Change**

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the amount of money necessary to raise the community spouse's income to the level of his/her monthly needs, and shall be obtained from the monthly income of the institutionalized spouse. In cases where the client became an institutionalized spouse on or after February 8, 2006, the community spouse resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's MMMNA before any resources are used to generate interest income to meet the allowance.

Prior to enactment of the Deficit Reduction Act of 2005, using the income first methodology was optional. Under the new federal law, using income first is mandatory in all situations. Although the Department's calculation for the needs of the spouse of the client uses income first, States were not required to use the income first methodology. The new rules at DSSM 20950.1 and 20970.1 include language which requires DMMA to use an income first approach before allocating additional resources to the community spouse. All available income of the institutionalized spouse must be considered before allocating additional resources to the community spouse.

#### **DMMA PROPOSED REGULATION #06-29**

#### **REVISIONS:**

#### **20950 Initial Eligibility Determinations**

Determine couples' combined countable resources for the month of application. Deduct from the couples' countable resources owned at the time of application a protected amount which is the greater of the following amounts:

the community spouse resource allowance (provided it does not exceed the maximum)

**OR**

the current State spousal share (\$25,000)

Compare the remaining resources to the Medicaid resource limit of \$2,000. If the remaining resources are over \$2,000, the institutionalized spouse is ineligible until the combined countable resources are reduced to the greater of the following:

the community spouse resource allowance plus \$2000

OR

the current State spousal share (\$25,000) plus \$2,000

An institutionalized spouse who (or whose spouse) has excess resources shall not be found ineligible per Section 1924 (c)(3)(C) of the Social Security Act where the state determines that denial of eligibility on the basis of having excess resources would work an undue hardship. Resources may be depleted in whatever manner the client/spouse wishes as long as there is no transfer for less than fair market value. See Section 20350.6 Transfer of Assets.

Once eligibility has been established, resources not used to determine eligibility for institutionalized spouses (i.e., the amount of spousal resource allowances) may be transferred to community spouses to assist such spouses in meeting their needs in the community. Thus, resources are not merely deemed available (or attributed) to community spouses in initial eligibility periods, but are actively made available to meet their needs in the community. Spouses who intend to transfer resources for this purpose are encouraged to do so as soon as is practicable before the first regularly scheduled redetermination of eligibility under.

Resources transferred to community spouses as well as other specified parties, without receiving fair market value for the property transferred, do not adversely affect continuing eligibility of institutionalized spouses. See Section 20350.6 Transfer of Assets

**NOTE:** Although the revised transfer of assets provisions allow the institutionalized spouse to transfer all of his or her resources to the community spouse without regard to the resource allowance, the initial eligibility determination will still attribute resources in excess of the community spouse allowance to the institutionalized spouse.

After eligibility has been determined the eligibility worker must provide a written notice to both spouses including the following information as appropriate:

- the amount of combined countable resources at the beginning of the first continuous period of institutionalization;
- the method used to compute the community spouse resource allowance, and
- institutionalized spouses' right to rebut through a fair hearing ownership or availability of income and resources.

## **20950.1 Application of "Income First" Rule in Applying Community Spouse's Income Before Assets in Providing Support of Community Spouse**

This policy relates to the procedure described in §1924(d) of the Social Security Act (42 U.S.C. §1396r-5) for increasing the amount of the married couple's resources that are not counted in determining the institutionalized spouse's eligibility for Medicaid, in order to protect income for the spouse who is remaining in the community (community spouse).

Section 6013 of the Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, mandates the State must consider all income of the institutionalized spouse that can be allocated to the community spouse, in order to bring the community spouse's income up to the minimum monthly maintenance needs allowance (MMMNA), before raising the community spouse's resource allowance to adequately provide for that income.

The income first methodology requires that an institutionalized spouse who applies for Medicaid must first divert income to his or her community spouse (who is not applying for Medicaid) before the institutionalized spouse may increase the amount of the couple's resources that would be protected from consideration in evaluating the institutionalized spouse's Medicaid eligibility. This is referred to as the "income first" methodology for determining the extent of protection of the couple's assets and applies to transfers and allocations of income and resources made on or after the date of enactment by individuals who become institutionalized spouses on or after such date.

*(Break In Continuity of Sections)*

## 20970 Fair Hearings

Either spouse can appeal the computation of the 1/2 spousal share, how resources are calculated for initial eligibility purposes, or the amount of the community spouse resource allowance. In addition, if either spouse establishes that the resource allowance is inadequate to bring the community spouse's income up to the minimum income allowance level + excess shelter, the resource allowance can be increased so that this level is reached.

This would likely occur in instances in which the spouses' combined income falls below the minimum income allowance level. The community spouse may need income generated from resources to supplement existing income. Hearings requested on the basis of these computations must be conducted within 30 days from the date of request.

### **20970.1 Income First Policy for Increasing the Spousal Resource Allowance to Compensate for Insufficient Income**

In nursing facility cases with a community spouse, the institutionalized spouse can make a request or file an appeal to increase the community spouse resource allowance (CSRA) to produce additional income for the community spouse. The hearing officer, as appropriate, may then increase the CSRA to an amount that is adequate to produce income that equals, but does not exceed, the MMMNA.

For Home and Community Based Services Waiver applicants/recipients see DSSM 20720.2.

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Temporary Assistance for Needy Families (TANF) Employment and Training 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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Temporary Assistance for Needy Families (TANF) Employment and Training 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 and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2006.

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

#### Citations

- 45 CFR Part 261, *Ensuring That Recipients Work*
- 45 CFR Part 262, *Accountability Provisions - General*
- 45 CFR Part 263, *Expenditures of State and Federal TANF Funds*
- 45 CFR Part 265, *Data Collection and Reporting Requirements*

#### Summary of Provisions with Cost/Budgetary Impact

#### TANF Program

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1) Division of Social Services Manual (DSSM) 3001, 3006.2, 3006.2.1, 3006.3, 3006.4, 3008.1.4, 3009, 3010.2, 3011

The purpose of these changes to existing policy is due to the new interim final regulations that mandate states to meet stricter participation requirements.

These changes encourage Employment and Training participation.

### **TANF Program**

2) Division of Social Services Manual (DSSM) 3009.1, 3009.2, 3009.3, 3009.2, 3009.3, 3011.1, 3011.2, 3011.3, 3012, 3012.1, 3012.2, 3031, 3031.2 and 3031.4

The purpose of these changes to existing policy is due to the new interim final regulations that require states to meet stricter participation requirements. Changes were also made to simplify the sanctioning process.

The changes to the Employment and Training sanction policy for not meeting the required participation hours eliminates the progressive 1/3, 2/3, and permanent sanction. The families are no longer permanently sanctioned off TANF. It is replaced with a full family TANF sanction that closes the TANF case once the individual does not meet the required hours of participation. Families may receive TANF benefits again as long as they complete a required consecutive 4 weeks of full participation.

The teen sanction changed so that a teen under the age of 16 not attending school will have the TANF grant sanctioned \$50.00 each month until either the child returns to school, the mother works with the appropriate agencies, or the TANF grant is reduced to zero. If the mother works with the appropriate agencies and the child still does not return to school the benefit will be restored.

The sanction for teens over 16 and not attending school is the removal of the teen from the assistance group and the reduction of the household size. If the teen returns to school or participates with Employment and Training for the required hours they can be added back to the assistance case.

### **DSS PROPOSED REGULATIONS #06-31**

#### **REVISIONS:**

#### **3000 Temporary Assistance for Needy Families (TANF) - Definition**

#### ***(Break in Continuity of Sections)***

#### **3001 Definitions**

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

- A. Benefits (Non-Time-Limited) - the receipt of TANF benefits that are not subject to a time limitation.  
Benefits (Time-Limited) - the receipt of TANF benefits for a limited period of time.

- B. Caretaker (Needy) - a parent or non-parent included in the grant who is caring for a needy child. Needy caretakers are required to comply with the CONTRACT OF MUTUAL RESPONSIBILITY to receive benefits. Needy caretakers are subject to the time limit requirements.

- Caretaker (Non-Needy) - a non-parent, not included in the grant, who is caring for a needy child. Non-needy caretakers are required to comply with the CONTRACT OF MUTUAL RESPONSIBILITY to receive benefits. Non-needy caretakers are not subject to the time limit requirements. These caretakers will receive benefits under the Children's Program.

- C. Children's program - the name of the agency's program for persons who receive non-time-limited benefits. Persons in this program are not subject to the usual time limits for the receipt of benefits. However, persons in this program must comply with a non-work-related CONTRACT OF MUTUAL RESPONSIBILITY, e.g., participation in parenting classes, school attendance for the child or immunizations as necessary.

D. Contract of Mutual Responsibility – an agreement between the TANF client and the agency which sets obligations and expectations between the TANF client and agency in exchange for benefits.

E. Cumulative Months - the total number of months, not necessarily consecutive months, which make up a particular time period.

F. Delaware's Temporary Assistance for Needy Families (TANF) Program - the title of Delaware's new welfare reform program.

G. Employable - the ability to engage in activities necessary to acquire and retain a job, at a wage level at least equal to the minimum wage; an employable person is physically and mentally able to participate in employment or activities necessary to seek and obtain employment, e.g. job search, job training, job readiness, etc. While an individual is employable the receipt of benefits is time-limited.

H. Employment (Subsidized) - a public or private sector job for which the employer receives a grant or allotment to pay all or a portion of the employee's wage.

Employment (Unsubsidized) - a public or private sector job for which the employer receives no grant or allotment to pay either all or a portion of the employee's wage.

I. Good Cause - An adult recipient may have legitimate reasons for not cooperating either in the development of the Contract of Mutual Responsibility or the requirements as set forth in the Contract. The adult recipient has "good cause" when either a circumstance or condition exists in either her/his personal or family situation beyond which she/he has no control, and which would prevent cooperation and/or participation.

~~Good cause for quitting a job would include but not necessarily be limited to:~~

- ~~- On the job discrimination;~~
- ~~- Health and/or safety risk.~~

~~J. H.B. 251 (1995) House Bill 251 established the Delaware Welfare Employment Program. This is a program where the agency places TANF clients in jobs with local employers while subsidizing the client's salary up to the State's minimum wage for a maximum of six months.~~

~~K.J. Pay After Performance - A work experience and/or Employment and Training program required for families with employable adults where the adult has not found employment or has lost a job. Families who were continuously on TANF prior to 01/01/2000 will have 24 months before being required to enter into this program. Families reapplying on or after 01/01/2000 will immediately enter this program. Participants will work to earn TANF benefits.~~

~~L.K. Sanction - a financial penalty for TANF client's failure or refusal without good cause to meet her/his work Employment and Training participation requirements. If the client refuses or fails to meet work related requirements (job search, training, etc.) or quits a job without good reason, for the 1st offense the penalty is 1/3 reduction of the grant; the second offense is a 2/3 reduction; and the 3rd is permanent loss of the entire grant the client's TANF case will be closed. If the TANF client refuses or fails to attend a Contract of Mutual Responsibility requirement (e.g., participate in parenting education) the penalty is a \$50.00 reduction in the grant for each month the client refuses or fails to participate.~~

~~M.L. Suitable Employment - employment that provides income at least equal to the payment standard after deduction of work expenses, the TANF work deduction and child care as paid, and provides wages at least equal to the minimum wage. Individuals will be expected to work at jobs that are below their skill levels, if such positions provide the only available employment.~~

~~N.M. Two Parent Program - able-bodied parents and their children who meet the standard of need and all TANF eligibility requirements, except deprivation, will be eligible for cash benefits. Eligibility for this program is based on need; there is no deprivation requirement. Cash benefits are time limited and both parents must comply with a Contract of Mutual Responsibility.~~

~~When one parent in an intact family is incapacitated, the family should not be placed in the two-parent program.~~

~~O.N. Unemployable - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited because s/he is physically or mentally disabled. An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.~~

~~The determination and duration of unemployability are made by a health care professional (e.g., doctor, nurse, nurse practitioner, therapist, etc.). Periods of unemployability are not counted toward the cumulative months of benefit eligibility under the time-limited program.~~

~~O. Week - A week is defined as seven consecutive days, Monday through Sunday.~~

**9 DE Reg. 1370 (03/01/06)**

*(Break in Continuity of Sections)*

**3006 TANF Employment and Training Program**

Delaware's Temporary Assistance To Needy Families welfare reform effort is based on the idea that TANF is a transitional benefit and should not become a way of life. The Division maintains that the way for persons to avoid TANF dependency is for them to find and maintain employment.

**3006.1 Mandatory Participants**

All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. The two exemptions are: 1) a parent caring for a child under 13 weeks of age or 2) an individual determined unemployable by a health care professional.

Able bodied children age 16 or older who are not attending school must participate in work or other alternative activities, e.g., GED.

**3006.2 TANF Employment and Training Participation and Participation Rates**

Under the Temporary Assistance For Needy Families Block Grant, DSS is required to meet the following work participation rates with respect to all families that include an adult or minor child head of household receiving assistance:

| <u>ALL FAMILIES</u> |                                   | <u>TWO-PARENT FAMILIES</u> |                                   |
|---------------------|-----------------------------------|----------------------------|-----------------------------------|
| <u>Fiscal Year</u>  | <u>Minimum Participation Rate</u> | <u>Fiscal Year</u>         | <u>Minimum Participation Rate</u> |
| 1997                | 25                                | 1997                       | 75                                |
| 1998                | 30                                | 1998                       | 75                                |
| 1999                | 35                                | 1999 and after             | 90                                |
| 2000                | 40                                | -                          | -                                 |
| 2001                | 45                                | -                          | -                                 |
| 2002 and after      | 50                                | -                          | -                                 |

ALL FAMILIES (SINGLE PARENTS AND TEEN PARENTS)

| <u>Fiscal Year</u>    | <u>Minimum Participation Rate</u> | <u>Required weekly hours of participation</u> |
|-----------------------|-----------------------------------|---|
| <u>2002 and after</u> | <u>50%</u>                        | <u>30 hrs</u>                                 |

TWO PARENT FAMILIES

| <u>Fiscal Year</u>    | <u>Minimum Participation Rate</u> | <u>Required weekly hours of participation</u>         |
|-----------------------|-----------------------------------|---|
| <u>1999 and after</u> | <u>90%</u>                        | <u>35 hr a weeks</u>                                  |
|                       |                                   | <u>55 hrs a week if receiving Child Care Subsidy.</u> |

DSS may face a lower work participation rate if it experiences a net caseload reduction compared to FY ~~1995~~ 2005.

Example: If it is determined that DSS' average monthly caseload in FY ~~1997~~ 2006 was 4 percentage points lower than average monthly caseloads in FY ~~1996~~ 2005, then, rather than having to meet at ~~30%~~ 50% work participation rate requirement in FY ~~1998~~ 2006, the rate would be lowered by 4 percentage points to ~~26%~~ 46%.

To be counted toward meeting the work participation rate, each individual must meet the ~~minimum~~ required number of hours ~~averaged over a each month~~ week. This differs from the old JOBS requirement in which the hours were averaged among participants, and where participants only had to meet at least 75% of the scheduled hours.

Single parents who are not working 30 hours a week or making an equivalent of 30 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal of 30 hours a week.

Two-parent families where one parent is not working at least 35 hours a week or making the equivalent of 35 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal 35 hours a week.

Two parent families who receive federally funded Purchase of Care services who are not working at least 55 hours a week or making the equivalent of 55 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities for one parent must equal 35 hours a week. The spouse must participate in work or work related activities equaling 20 hours a week.

Teen parents are required to attend school, work, or participate in the employment and training activities. Elementary, secondary, post-secondary, vocational, training school, and participation in a GED program meets participation requirement for the month and is the equivalent to work. If they are not attending one of the above types of school or working for 30 hours a week they must participate in employment and training activities for 30 hours a week.

Single custodial parents with a child under 12 months of age are able to receive an exemption from Employment and Training requirements for a total of 12 months in their lifetime. These 12 months can be used any time the parent has a child less than 12 months of age. Once the youngest child reaches 12 months of age the parents are required to participate in Employment and Training. If they are already working the equivalent of their required Employment and Training Hours (20, 30, 55), the DCIS II system will code them as volunteers for Employment and Training.

~~Example: Under JOBS, if Ms. Jones was scheduled for 20 hours and attended 15, she was counted as having participated for 20 hours. Under TANF, Ms. Jones would fail to meet her 20 hours requirement, and DSS could not count her as participating. In addition, under JOBS, you could pair participants and combine their hours to get more participants to the 20 hour level. For instance, one participant working 25 hours could be paired with one participant working 15 hours to get two participants. Under TANF, only one participant could count as having met the 25 hour rule.~~

The monthly participation rate is calculated as follows:

Numerator: # of families receiving assistance that include an adult or minor head of household who is engaged in work for the requisite hours

divided by

Denominator: # of families that include an adult or a minor child head of household receiving assistance, less # of families sanctioned in that month for failure to participate in work (for up to 3 months in preceding 12 month period), less the number of non-needy caretaker households, ~~less the number of temporarily incapacitated households,~~ less the number of mothers with a child under 13 weeks old.

**8 DE Reg. 1618 (5/01/05)**

3006.2.1

TANF Employment and Training Participants Who Count for TANF Participation

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According to provisions of Delaware's Temporary Assistance For Needy Families, the following individuals must participate in work related activities and are included in the denominator for calculating the Federal participation rates.

- Employable as defined in DSS TANF policy;
- Employable adults in the Time-Limited Temporary program;
- Adults for whom the Contract of Mutual Responsibility specifies the employment-related activities that will be required;
- Employable adults who are not exempt because they are medically unable to participate;  
and
- Employable adults who are not exempt because they are the caretaker parent of an infant under 13 weeks of age.

### 3006.3 TANF Employment and Training Activities

The Division of Social Services, in conjunction with the Delaware Department of Labor and the Delaware Economic Development Office, has developed employment and training programs to move TANF clients to economic independence. These agencies will conduct initial and ongoing assessments of client employability and appropriateness of employment and training related activities. For individuals deemed unable to work because ~~s/he is~~ they are physically or mentally disabled a referral is ~~to be~~ made to the Division of Vocational Rehabilitation. Use Form 134.

The Division ~~will establish~~ has agreements with the Delaware Department of Labor and the Delaware Economic Development Office to offer employment and training activities.

The goal is to place the adult recipient in an unsubsidized job in as timely a manner as possible. The Department of Labor will have the option of recycling through job search those adult recipients who are unsuccessful in finding work, and/or placing the adult recipient in an alternative work experience, OJT, remediation, or a skills training program. Also, both the Division and the Department of Labor are jointly responsible for the development of an Employability Development Plan.

Although the Department of Labor assumes primary responsibility for assigning adult recipients to employment-related activities for this age group, the Division retains responsibility for sanctions, federal reporting and other TANF requirements.

### 3006.4 TANF Employment and Training Activities Which Constitute Participation Under TANF

The following are employment-related activities that count as participation:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience( including work associated with refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- On the job training;
- Job search and job search readiness (six week limit);
- Community service programs;
- Vocational educational programs (not to exceed 12 months);
- Job skills training directly related to employment;
- Education directly related to employment for a recipient who has not received a high school diploma or equivalent;
- Satisfactory attendance at secondary school or certificate of general equivalence;
- The provision of child care services to an individual participating in a community service program;
- ~~Education, training and job search activities. Eligibility will be determined by the employment contractors.~~
- ~~Pay after performance work experience, with the hours determined by dividing the benefits by the minimum wage, plus up to 10 hours of job search weekly;~~
- Regular school attendance or appropriate alternative activity (e.g., training or employment) for dependent children and minor parents;
- ~~Job search may be required for applicants and recipients.~~
- Participation in Vocational Rehabilitation program for eligible recipients.

- Nursing or nursing assistant activities performed without pay are considered work experience.
- ~~Other work-related activities that assist in obtaining or maintaining employment or improving work performance.~~

### Education and Training

Students who do not meet the Blevins Bill requirements in section 3006.6 can receive 1.5 hours of study time for each credit hour if the education or training class requires homework and study time to be completed outside of class time. A 3-credit course would equal 7.5 hours of participation.  $(3 + (3 \times 1.5) = 7.5$ .

If a recipient is attending training or a program that does not have a designated credit hour, a determination of the amount of study time required for this training will have to be determined independently. This will be reported on the General Activity Screen in the DCIS II Employment and Training sub-system. A question will ask if this activity requires study time, if it is answered yes, then a mandatory screen will appear to enter the amount of weekly study hours. The amount of study hours necessary will be determined by the contractor.

The student must be in good standing as it relates to attendance and achievement as defined by the program the student is attending.

Example: A participant who is working 15 hours a week and taking 2 three-credit classes will have a participation rate of 30 hours. (15 hours of work + 6 credit hours of class + 9 hours of study time.

### 9 DE Reg. 1372 (03/01/06)

#### ~~3006.5 TANF Employment and Training Participants Who Count for TANF Participation~~

~~According to provisions of Delaware's TEMPORARY ASSISTANCE TO NEEDY FAMILIES, the following individuals must participate in work-related activities and are included in the denominator for calculating the Federal participation rates.~~

- ~~Employable as defined in regular DSS TANF policy;~~
- ~~Only employable adults in the Time Limited Temporary program;~~
- ~~Adults for whom the Contract of Mutual Responsibility specifies the employment related activities that will be required;~~
- ~~Employable adults who are not exempt because they are medically unable to participate; and~~
- ~~Employable adults who are not exempt because they are the caretaker parent of an infant under 13 weeks of age.~~

### 8 DE Reg. 1618 (5/1/05)

### 9 DE Reg. 798 (11/01/05)

### *(Break in Continuity of Sections)*

## 3008 Eligibility of Certain Minors

### 3008.1.1 Babies Born To Teen Parents

This policy applies to both applicants and recipients not covered by family cap rules.

Babies born after December 31, 1998 to a teenage parent are not eligible for cash assistance (TANF and GA) unless the parent is:

- married; or
- at least eighteen (18) years of age.

An emancipated minor is considered an adult and therefore, the baby would be eligible for cash assistance. If both parents live in the home, both parents must be at least eighteen (18) years of age or married for the baby to be eligible. Once the minor parent turns 18, the parent and the baby are both eligible for cash assistance, if otherwise eligible.

Babies not receiving cash assistance are eligible for all other DSS services and programs including food stamps, grant-related Medicaid, and Welfare Reform child care. In lieu of cash assistance, the Division may provide non-cash assistance services. (See DSSM 3008.1.3)

Determining financial eligibility and grant amounts for an assistance unit which contains a child(ren) affected by this provision:

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The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

Exception:

This restriction will not apply when:

- the child is conceived as a result of incest or sexual assault; or
- the child does not reside with his/her parents.

3008.1.2 Three Generation Households

In a three (3) generation household, the grandparent could receive benefits for him/herself and for the teen parent but not for the child of the teen parent. This means that there is not grandparent deeming in these cases.

3008.1.3 Providing Non-cash Assistance:

The services that non-cash assistance will provide are as follows:

DSS will offer non-cash assistance to these families after their request for cash assistance has been denied. The purpose of the voucher program is so the caretaker can purchase necessary items for the child denied benefits due to the parent being unmarried and a minor. Necessary items may include formula, if the minor parent and child are not WIC eligible, diapers, baby wipes, clothing. This is not an all inclusive list. Items covered by Medicaid are not eligible. A determination of need is to be completed by the contracted vendor. Though a baby may receive these services in subsequent months, the service ends when the parent either marries or turns eighteen.

A monthly voucher is to be no more than \$69. The primary caseworker will explain that the family could receive a monthly voucher that may cover more than one month, but shall not exceed \$207, the amount of three months of A Better Chance Welfare Reform Program grant awarded to children born before January 1, 1999. When a customer receives a monthly voucher greater than \$69, the customer will be ineligible to receive services as follows:

- For the following month when the voucher is between \$70 and \$138.
- For the following two months when the voucher is between \$139 and \$207.

The primary caseworker will make the initial referral for the non-cash assistance to the contracted vendor. Referrals will include the name and Social Security number of the adult caretaker and the minor parent, the name and date of birth of the baby, address, a phone number for contacting the family and a DCIS II case number. The adult caretaker will contact the vendor if there is a need for services in subsequent months. The case record will be documented when a referral for this program is made to a contracted vendor.

Provide families referred for this service with appropriate vendor address and telephone number.

3008.1.4 Minor Teen Parents

Teen parents are required to attend either:

- elementary;
- secondary;
- post-secondary;
- vocational;
- training school,
- a GED program; or
- work.

If these minor teen parents are not participating in any of the above activities they should be referred to the Employment and Training contractors.

Refer to DSSM 3012.2, DSSM 3012.4 and DSSM 3012.5 to be able to receive TANF.

**9 DE Reg. 1978 (06/01/06)**

*(Break in Continuity of Sections)*

## 3009 Contract of Mutual Responsibility

The caretaker enters into a Contract of Mutual Responsibility with DSS. The Contract will specify self-sufficiency components such as, but not limited to, employment activities, cooperation in securing child support, school attendance requirements, family planning, parenting education classes, substance abuse treatment, and immunization requirements. The Contract is designed to be individualized to the specific needs and situation of each family. Therefore, the exact requirements within the Contract may vary from family to family. This document will be revised as the needs and the situation of the family evolve. (See DSSM 3010.2.5)

The State will ensure that services related to these provisions are available to the recipient. Additionally, other supportive services will be available (such as child care) if necessary. If the services are not available to the recipient and it is in the Contract, the recipient will not be sanctioned. The Contract will be modified to reflect that the service is unavailable at that time. For instance, if a recipient was directed to seek substance abuse treatment on an in-patient level, but a bed was not available for four months, that part of the Contract would be suspended until a bed became open for the individual.

In establishing and enforcing the Contract, the DSS worker has primary responsibility for ensuring that clients understand what is expected of them. While sanctions will be imposed for failure to meet the expectations of the Contract, the intended result of the sanction process is to convince clients of the need to cooperate. An important element of the process is "coaching" the client to transcend any barriers to meeting Contract expectations.

~~In the past, such barriers may have been good cause factors for clients not accomplishing what they need to do.~~ Under TANF, however, the client and worker must become partners in efforts to surmount any and all obstacles to success. While it is expected that the client verbalize any difficulties s/he may have or expect to have in meeting TANF requirements, the worker also has a duty to do whatever s/he can to elicit from the client any information needed to identify and overcome hurdles.

Coaching is without question a difficult task, given the multitude and variety of problems a client may face and the many steps along the road to self-sufficiency. Nevertheless the worker needs to embrace it as a critical element in the achievement of our welfare reform objectives.

Certainly we want TANF clients to be clear at all times about their obligation to exercise personal responsibility in exchange for benefits. When clients have a clear understanding, yet still fail to meet their obligations, workers need to respond quickly. The swiftness of our actions will demonstrate the seriousness of our intentions. ~~This was the primary reason we requested federal waiver of the conciliation process.~~

However, the ultimate goal of the sanction process should not only demonstrate how serious we are, but that we are available to help them become self-sufficient. We want clients to realize it is to their advantage to work with us and not against us.

Workers who truly understand the foundations upon which our sanction policies exist are in a better position to successfully steer clients through the welfare reform process. Keep in mind the following guidelines:

a) At every step of the way, workers should make the sanction process clear for clients; that is, explain clearly what the client's responsibilities are and what the consequences are for failure to meet these responsibilities.

b) Encourage clients to discuss any problems they face in meeting TANF requirements. Coach them in a positive way to overcome these hurdles. Offer assistance, but make it clear that the client has ultimate responsibility for meeting requirements.

c) If and when clients fall short of expectations, before taking action to apply sanctions, make sure that clients understand exactly what requirement(s) was not met and the consequences of it. This is not to say that we want workers to offer conciliation, but rather that we want workers to emphasize cause and effect. In this way clients should more readily recognize the benefits of cooperating and doing what is expected in the future.

Sanctions are not our desired result. They are a means to accomplish the goal of client cooperation.

### 3009.1 Failure to Comply With CMR and Imposition of Sanctions

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning, 2) self-sufficiency and 3) teen responsibility requirements.

1) Enhanced family functioning requirements of the Contract of Mutual Responsibility include, but are not limited to, attending family planning and parenting education sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanctions for non-compliance with these requirements start at \$50.

2) ~~Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training responsibilities, work related and ensuring school attendance requirements for dependent children under age 16. Sanctions for non-compliance with these requirements start at a one-third reduction in benefits result in the closure of the TANF case.~~

3) ~~Teen responsibility requirements include maintaining satisfactory school attendance. Teens under the age of 16 must maintain satisfactory school attendance. The parent must work with the child and school to ensure satisfactory attendance. If the teen does not maintain satisfactory attendance at school and the parent fails to work with the school or appropriate agency to ensure school attendance, the case will be sanctioned. This sanction is an initial reduction of \$50. This reduction will increase by \$50 every month until there is compliance with the requirement. If the parent complies and works with the school the TANF benefit will be restored, even if the child does not return to school.~~

3) ~~Teen responsibility requirements include maintaining satisfactory school attendance, or ensuring satisfactory attendance, for dependent children 16 years of age and older or participating in employment and training activities. The sanction for non-compliance with these requirements is \$68, if the teen does not comply, and an additional \$68 if the caretaker does not work to remedy the situation. the removal of the teen from the assistance grant. The teen can not be added back into the case until verification of school attendance is received or verification of four consecutive weeks of participation and one month of being removed from the grant.~~

The severity of the sanctions differs depending upon the type and number of violations. Individual penalties and the cure for each are noted in the policy sections which follow. However, when imposing sanctions, these are the rules in which sanctions are applied:

1. ~~The penalty for failure to comply with self-sufficiency requirements of the Contract of Mutual Responsibility (employment and training responsibilities) is a 1/3 reduction of the TANF benefit for the first occurrence, 2/3 reduction of the TANF benefit for the second occurrence and a total loss of the TANF benefit for the third occurrence the closure of the TANF case.~~

2. ~~The penalty for failure to comply with teen responsibility requirements for a child under 16 years of age is a \$68 50 reduction in the grant, if the teen does not comply, and an additional \$68 if If the caretaker does not work with the appropriate agencies to remedy the situation, an additional \$50 penalty continues each month until the mother works with the appropriate agency, the child returns to school or the grand reduces to zero. The only way to cure the sanction is for the mother to work with the appropriate agency and/or the child returns to school. If the child does not return to school but he mother has been working with he appropriate agency then the sanction can be lifted.~~

~~Failures to comply with self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.~~

3. ~~The sanction for teens 16 years or older who do not attend school and/or employment and training activity for the required hours is the removal of that teen from the TANF grant and a reduction in the house hold size. The sanction can only be cured when the teen is removed from the grant for one month and participation in employment and training for four consecutive weeks is verified or satisfactory school attendance is verified.~~

3. 4. ~~The penalty for failure to comply with enhanced family functioning requirements of the Contract of Mutual Responsibility is an initial \$50 reduction of the TANF benefit. This reduction will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one, family functioning requirement. Clients will have to comply with all requirements before the sanction can end.~~

4. 5. ~~Failing to comply with both enhanced family functioning and self-sufficiency requirements of the Contract of Mutual Responsibility will result in combined penalties for each. For example, both a \$50 reduction and 1/3 reduction to the TANF benefit. For example, impose the \$50 reduction and then close the case.~~

~~Failures to comply with self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.~~

When there are multiple sanctions always impose the monetary sanctions first; enhanced family functioning and teen under 16. The removal of a teen from the case is second, and the self-sufficiency which results in a case closure is last. All sanctions need to be imposed.

### 3009.2 Sanctions Flow Chart

~~Below is a flow chart, which describes in graphic detail the sanction process. This chart is intended to be a conceptual representation of the process and does not take into account the level of worker discretion and understanding needed to make sanction decisions. It will give workers a quick review of how the sanction process works and flows in the ideal, but is not a literal account of the way workers will always confront the process in actual practice.~~

~~One thing of note, the chart depicts the eligibility interview, the Employment and Training interview and initial participation with Contractor/DOL programs as one Orientation process not as individual events. This means clients, who fail to attend their employment and training interview and then comply, are not sanctioned a second time if they fail to attend contractor or DOL orientation. It simply means they have not completed the Orientation process and therefore, have not completely cured their initial sanction. In order to show compliance with the entire Orientation process, clients must attend the missed event and demonstrate cooperation for two weeks. Any failure to do this means the initial sanction continues. However, as noted further in these policies, should non-compliance continue beyond two months, workers will initiate a second sanction regardless of completion of the process.~~

### 3009.3 Benefit Reduction for Multiple Sanction Types

The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be imposed at the same time. The hierarchy is as follows:

~~1. If in place, the one-third penalty for failing to meet work and training requirements and the one-third penalty for not cooperating with school or agency officials to meet attendance requirements for dependent children under the age of 16 are the first to be imposed by DCIS.~~

~~2. 1. If in place, The \$68 sanction for teens 16 and over teens who fail to meet school attendance requirements and an additional \$68 for their parents who do not cooperate to remedy the situation is imposed next is the removal of the teen from the grant first, if applicable.~~

~~3. 2. If in place, The \$50 sanction for failure to meet enhanced family functioning requirements (CMR) and the teen under 16 years of age sanction is first imposed next, by DCIS.~~

~~3. The self sufficiency sanction, failure to meet participation requirements is a full TANF sanction resulting in a case closure. This is imposed last.~~

~~The order in which sanctions are imposed is important; since different sequences result in different benefit amounts. By being familiar with the hierarchy, workers will be able to explain to clients how multiple penalties will impact benefits. because we can not sanction a closed case. If a client has both an enhanced family function and a self-sufficiency sanction for the same period it is important to make sure the enhanced family sanction that reduces the TANF grant is imposed prior to the self sufficiency sanction that closes the case.~~

### *(Break in Continuity of Sections)*

### **3010 Participation and Cooperation in Developing CMR**

It is mandatory that the caretaker enter into a Contract of Mutual Responsibility. The Contract applies to those families in the Time Limited Program and Children's Program, as well as to teen parents. Other family members within the assistance unit may be subject to compliance with provisions of the Contract, even if the caretaker is a non-needy caretaker relative payee.

If the caretaker is a non-needy caretaker relative, the individual would not be required to participate in employment-related activities, but may be required to participate in other Contract activities.

The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.

DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited to, participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its

requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.

Negotiating elements of the CMR can mean that aspects of the CMR are waived. On a case by case basis, elements of the CMR can be waived if good cause exists. If the particular circumstances of a family warrant waiving elements of the CMR it is to be justified and properly documented in the case record.

See Administrative Notice A-10-99 DFS/DSS Procedures.

For example: a parent's only child is terminally ill. It is reasonable to determine that a parent would want to spend as much time with the child as possible. Therefore, waiving school attendance requirements and parenting education requirements are reasonable. Document the child's illness and the reason for the waiving of the CMR requirements in the case record.

#### 3010.1 Penalties for Not Cooperating in Development of CMR

The fiscal sanction for not cooperating, without good cause, in the development of the Contract will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed.

If caretakers are actively negotiating the terms of their Contracts, DSS will not impose the \$50.00 penalty. DSS will provide caretakers up to 10 days to reach a resolution. After this time, DSS will consider caretakers as not cooperating if they refuse to participate in the further development of their Contracts.

DSS will also give those caretakers, who choose to do so, the opportunity to discuss their Contracts with persons outside of the DSS office. DSS will allow caretakers up to 10 days to take Contracts outside of the office, during which DSS will not impose the \$50.00 penalty. DSS will consider caretakers who have not returned Contracts after that time as not cooperating and subject to the \$50.00 penalty.

#### 3010.2 Contract of Mutual Responsibility and Domestic Violence Screenings

##### 3010.2.1 Family Development Profile

The Family Development Profile is a an assessment tool used to identify possible social, family and emotional barriers to self-sufficiency as they affect an individual's ability to obtain and retain employment. The Family Development Profile covers issues of self-esteem, health and family relationships. This tool is designed to surface those issues which, when resolved, will increase the participant's ability to become truly self-sufficient. This assessment tool is a mandatory assessment tool for all adult and teen TANF recipients.

### *(Break in Continuity of Sections)*

## **3011 Employment and Training and Work**

DSS expects employable adults to participate in either employment or activities related to finding work (e.g., employment and training activities) for 30 hours a week for two consecutive weeks prior to TANF benefits to being authorized. The TANF benefit will continue uninterrupted as long as the participation in work or work activities continues for the required number of hours per week (see section 3006.2). Either an employable adult is working or is participating in activities to secure employment. DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses; ~~which are components of the self-sufficiency requirements.~~

#### 3011.1 Employment and Training Requirements

Clients must keep appointments with employment and training staff, cooperate in the development of the Employability Plan, and participate in employment and training activities equivalent to the required weekly amounts.

Clients who have secured employment are expected to continue employment ~~unless they have good cause for terminating a job (see Good Cause definition under 3001 Definitions)~~ and participate in approved employment and training activities.

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. ~~Since~~ Parents with children under age 16 are expected to exert more influence over their children, ~~and since early school attendance is so important in moving children down the path to self-sufficiency, this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher penalties for noncompliance.~~ (See section DSSM 3009 and 3012 for requirements and sanctions related to cooperation to ensure

school attendance by children 16 and over and children under the age of 16.): ~~A third non-compliance will not result in a permanent but a curable penalty of loss of cash benefits. See DSSM 3011.2.~~

#### 3011.2 Sanctions for Failing to Comply With Requirements

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

Self-sufficiency requirements include those related to employment and training, and work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

~~The fiscal sanction for failure without good cause to meet school attendance requirements for a child under 16 are the same as for other self-sufficiency requirements. This includes teen parents who are dependent children.~~

The penalty for noncompliance with the self-sufficiency requirements will be:

- a) ~~for the first offense, a 1/3 reduction in TANF~~
- b) ~~for the second offense, a 2/3 reduction in TANF~~
- c) ~~for the third offense, a loss of all cash benefits.~~

the closure of the entire TANF case for one month and a mandatory four consecutive weeks of participation. The four consecutive week participation is mandatory to cure the sanction and reopen the case. The case may remain closed longer than one month if the four consecutive weeks of participation have not been completed.

~~The duration of the first and second sanctions will each be two months or until the person complies, whichever is shorter. If, after one month, the person has not complied, DSS will schedule an interview to explain again the participation requirements. If at the end of the two month period there is no demonstrated compliance, the sanction will increase to the next level. If the penalty is related to work non-compliance then the third penalty is permanent loss of benefits, if unless the adult is deemed unemployable, remove the sanction and enter the correct exemption. Then the case may be reopened for the length of time that the adult is not able to work. If there is a third penalty and it is related to school attendance, it can be cured by the adult caretaker cooperating with school officials to remedy the situation.~~

~~The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:~~

- a) ~~for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.~~
- b) ~~for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.~~
- c) ~~for a third offense, a permanent loss of all cash benefits.~~

~~The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months or until the individual obtains a job of equal or higher pay.~~

| <b>Contract Requirement</b>  | <b>Amount/Duration of Sanction</b>  | <b>Increase <del>_____</del> 2,<br/>months <del>_____</del> if <del>_____</del> not<br/>compliant</b> |
|--|---|---|
| Employment and Training  | <del>1/3 reduction for 2 months or until compliance whichever is shorter for first offense; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense.</del>   | <del>Yes</del>  |
| <del>Caretaker cooperation to ensure School Attendance for children under 16 years</del> | <del>1/3 reductions for 2 months or until compliance whichever is shorter; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense.</del>  | <del>Yes</del>  |
| <del>Keeping a job, unless good cause exists to quit the job</del>                       | <del>If meeting job search requirements, 1/3 reduction for 2 months or until person enters a job of equal or higher pay, whichever is shorter; 2/3 reduction for 2 months or until enters a job of equal or higher pay whichever is shorter for second offense.</del> | <del>No</del>   |
| <del>Keeping a job, unless good cause exists to quit the job</del>                       | <del>If not meeting job search requirements, full loss of benefits until compliance or either meeting job search requirements or person enters a job of equal or higher pay</del>   | <del>N/A</del>  |

| <b>CMR Requirements</b>                          | <b>Sanctions</b>  |
|--|---|
| <u>Employment and Training/work and Workfare</u> | <u>TANF case closure for one full month plus four consecutive weeks of full participation prior to opening the case.</u>  |
| <u>Child under 16 not attending school</u>       | <u>A\$50.00 successive sanction for the teen not attending school when the parent does not work with the school to ensure school attendance.</u>                |
| <u>Child 16 and over not attending school</u>    | <u>The removal of the teen from the grant and the reduction in household size.</u>  |
| <u>CMR requirements</u>                          | <u>An initial \$50.00 reduction in the TANF grant. If the participant has not complied, an additional \$50.00 reduction each month until compliance occurs.</u> |

~~Because the third sanction is for the duration of the demonstration, an additional supervisory review of case circumstances will be required before imposing the third sanction, in order to determine whether good cause for noncompliance exists. Impose the third sanction, after such a review, if good cause is found not to exist. Noncompliance with more than one of the self-sufficiency requirements at a point in time will result in a one-third benefit reduction for each sanction.~~

~~Example: A person fails to attend the DOL orientation and, prior to a cure then fails to cooperate with officials to ensure school attendance by his/her 14 year old child. The resulting sanctions would result in a 2/3 (1/3 + 1/3) loss of case benefits.~~

Note: Under TANF regulations, Section 402(e)(2), DSS cannot impose sanctions when individuals refuse to participate in work or work-related activities if these individuals are single custodial parents with at least one child under age six, and these parents have demonstrated an inability to obtain needed child care. This provision neither makes parents exempt from participation in work activities, nor makes them exempt from time limits. It only restricts DSS authority to sanction.

Parents must demonstrate the following:

the unavailability of appropriate child care within a reasonable distance from their home or work (reasonable distance is defined as care that is located in proximity to either a parent's place of employment or near the parent's home, generally care that is within one hour's drive);

the unavailability or unsuitability of informal child care by a relative or under other arrangements (unsuitability of informal care is defined as care that would not meet the physical or psychological needs of the child);

the unavailability of appropriate and affordable formal child care arrangements (affordable care is defined as care that would provide access to a full range of child care categories and types of providers ; and appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parents and children).

Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents will have 10 days, either from the date when they first attempted to find child care or ten days from the date DSS instructed them to participate in work activities, to contact the worker. DSS staff will have 20 days to review and decide whether the parents have a legitimate claim. If DSS determines that the parents did not demonstrate their claim, workers are to impose the sanctions. DSS will not sanction parents who have demonstrated their claims. Document reasons in DCIS under Case Remarks.

### 3011.3 Curing Sanction Penalties

Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of one month, including four consecutive weeks of 30 hours of participation.

Clients, unless indicated otherwise, must participate in the work and/or work related activities attachment model for a minimum period of two four consecutive weeks.

EXAMPLE: A client fails to keep her initial appointment with Employment and Training staff, and to meet the required hours of participation and is sanctioned. In order to cure this sanction, the client must not only keep her appointment with Employment and Training staff, but must also keep her appointment with DOL contact the Employment and Training staff, and follow through with her DOL work activity for 30 hours a week (client's required hours) for a minimum period of two four consecutive weeks before the sanction is considered cured.

~~The failure to keep appointments with both Employment and Training staff and DOL staff in the above example would be considered the first offense for sanctioning purposes. (It is a first offense because both Employment and Training and DOL are part of the same Orientation process, for which the cure can only be participation in DOL activity for two weeks). Any failure to continue the recommended activity after that point would be considered a second offense. For which the cure is participation in the activity to which the person was previously assigned, or an activity designed by Employment and Training to lead to full participation, for a minimum period of two weeks.~~

~~The sanction for quitting a job will end when the individual returns to the former job or obtains a job of equal or higher pay. However, cash benefits can be restored at a reduced level, depending upon the number of offenses (first or second), as long as there is compliance with the job search requirement for a period of two weeks. If after two months, clients have maintained compliance with the job search requirement, benefits can be restored in full.~~

DSS expects employable adults to participate in either employment or activities related to finding work (e.g., employment and training activities) for TANF benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. The failure of clients to maintain either of these activities is a sanctionable offenses, which are similar components of the employment and work related activity requirements.

### 3012 School Attendance Requirements

School attendance requirements exist for both adults and children. Children are expected to maintain satisfactory school attendance. Acceptable school attendance will be defined by the individual school. If the school does not define what is acceptable, use an 85% attendance rate.

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. These penalties will differ depending upon whether a child is under the age of 16 or is over age 16.

## 3012.1 Sanctions and Cures for Unsatisfactory School Attendance

### CHILDREN UNDER 16 YEARS OLD

The fiscal sanction for noncompliance, without good cause, with school attendance (including dropping out of school) or alternative participation requirements will be:

A \$50.00 reduction in the TANF grant each month if the parent does not work with the teen and the school to ensure school attendance. If the parent works with the school and the teen still does not comply with the requirement the sanction is removed.

### CHILDREN AGE 16 AND OLDER, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN OR HEAD OF HOUSEHOLD

The fiscal sanction for noncompliance, without good cause, with school attendance, including dropping out of school, or alternative participation requirements will be:

~~A reduction of \$68.00 in TANF which represents the teen's portion of the grant. The removal of the child from the grant and the subsequent reduction in household size.~~

~~If the parent or caretaker is not cooperating with school officials or other agencies, as appropriate, to remedy the situation, an additional \$68.00 reduction in TANF will be imposed.~~

~~Teens who drop out of school can only have their need restored to the grant if they participate in work, or agree to re-enroll in school. So for teens to be in satisfactory compliance with school attendance requirements, they will either have to remain in school or, if not, they must be working.~~

To cure the sanction teens over 16 must first serve a full month sanction and either return to school, work, or participate in employment and training for four consecutive weeks whichever is longest.

## 3012.2 Curing Sanction Penalties

~~Compliance exists when there is evidence that the caretaker has cooperated with school officials, and the student has subsequently attained satisfactory attendance at the school.~~

### ~~Teen Parent up to age 18 Education/Training Requirements~~

~~Teen parents are required to attend either a). elementary, b). secondary, c). post secondary, d). vocational, or e). training school, participate in a GED program or work.~~

### ~~Sanction for not meeting Teen Parent Education/Training requirement~~

~~A reduction of \$68.00 in TANF.~~

### ~~Curing Teen Parent Education/Training Sanction~~

~~The sanction will end when either the Teen Parent re-enrolls in school or GED program, or participates in work.~~

## ***(Break in Continuity of Sections)***

## **3031 Work For Your Welfare**

When a family applies for TANF assistance they will be referred to the contractor to participate and complete their required two consecutive weeks of required hours (30, 35, or 55) in approved employment related activities.

All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single adult recipients, who reach their 22<sup>nd</sup> month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. Additionally, all TANF recipients who are employed must have regular earnings of the current federal minimum wage at twenty-five hours per week. (The current federal minimum wage is \$5.15 per hour, which at 25 hours per week equals \$128.75 per week earnings.) A person who is employed but not earning at least the equivalent of the current federal minimum wage at ~~twenty five~~ thirty hours per week will be considered mandatory for Work for Your Welfare. A contracted worker must receive his or her wages on a regular basis to be exempted from this requirement.

Work for Your Welfare is defined as a work experience program in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of ~~job search activity~~ approved employment related activities per week. The failure to complete ~~job search~~ the required 10 hours of approved activities as required will result in a ~~progressive 1/3 sanction~~ full family sanction, closing the entire TANF case. For two parent households,

one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites.

#### 3031.1 Hours of Participation - One Parent Families

Effective 10/1/98, participants in single parent households are required to work for up to 30 hours per week. The 30 hours are the maximum participation hours. DSS determines the actual hours of participation by dividing the TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceeds 30 hours per week, participants are to complete no more than the 30 hours maximum. In addition to these hours, every participant is expected to participate in 10 hours of job search approved employment related activities per week.

EXAMPLE: The TANF grant amount for two is \$270. Divided by the minimum wage (\$6.15), this equates to 52 hours per month for the TANF grant (always round down to the nearest whole number). The Food Stamp allotment amount is \$224. Divided by the minimum wage (\$6.15), this equates to 43 hours per month for the Food Stamp allotment. Together this would mean that the participant must work 95 hours per month. Divide the 95 monthly hours by 4.33 (number of weeks per month) to arrive at a weekly participation rate. 95 divided by 4.33 is 21 hours per week. So the above participant must participate 21 hours per week in a work-for-your welfare placement ~~in order to receive his/her full grant and allotment.~~

~~Total performance hours are based on grant amounts regardless of sanctions. In other words, a participant who has a 1/3 sanction does not perform fewer hours because of the sanction. Performance is based on what the total grant would have been without the sanction.~~

EXAMPLE: A family of two has a grant of \$270. The grant, however, has been reduced by ~~1/3 \$50.00~~ because of an ~~employment and training sanction~~ a CMR sanction. When DSS assigns this adult to work, the total performance hours are based on the grant amount of \$270 despite the ~~1/3 \$50.00~~ sanction.

The 10 hours of approved employment related activities per week ~~job search~~ requirement still applies. The failure to complete the 10 hours of job search approved employment related activities is a sanctionable offense, ~~punishable by the progressive 1/3 penalty for failure to comply with an employment and training activity resulting in a full TANF sanction which closes the entire TANF case.~~

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their ~~grant adjusted~~ entire TANF case closed. For each hour not worked, participants ~~will have the grant adjusted downward by the amount of the minimum hourly wage.~~

EXAMPLE: ~~A participant in a family size of 2 is required to work 52 hours in a month. The participant however, only works 50 hours. This participant will have the grant reduced by \$6.15 (minimum wage) x 2. DSS will reduce the grant amount for this participant by \$10.00, always rounding down to the nearest dollar amount.~~

Once DSS determines the hours participants are to work, the contractor will assign participants to a work site. At the work site, participants must complete their assigned hours within the time period determined by the contractor and the work site.

#### 3031.2 Hours of Participation - Two Parent Families

Two parent households must participate in work for your welfare as soon as DSS determines the household eligible for benefits. In two parent households, one parent must participate at their assigned maximum performance hours (35 hours per week), and the second parent must participate in required employment related activities as determined by DSS and the DSS work for your welfare contractor, unless the second parent is otherwise exempt (e.g., caring for a disabled child or is incapacitated). DSS requires the second parent in the two-parent

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household to go to the workfare contractor to be placed in a component other than workfare approved employment related activities.

If the families of two-parent households receive federally subsidized child care, together they must participate in at least 55 hours per week of required activity. In this case, one parent will do work for your welfare activity, and the second parent must participate in a sufficient number of hours with the work for your welfare contractor so that, when combined with the hours of the first parent, together they equal 55 hours. If the one parent in the two parent household who is participating in work for your welfare does not complete his/her required performance hours, the grant allowance for the entire family is reduced by the hours not worked times the minimum wage TANF case is closed. The grant adjustment occurs case closes regardless of whether the second parent completed his/her required hours of employment related activities.

If the second parent does not complete or refuses to complete the required employment related activities, DSS will impose a separate 1/3 sanction on this second parent TANF full family sanction which closes the entire TANF case. This sanction will increase by 1/3 as long as this second parent refuses to complete his/her required activities. DSS will treat the second parent's 1/3 sanctions separately from the first parent's sanctions. For example, if the first parent in this two parent family already has a 1/3 sanction, the 1/3 sanction for the second parent will not increase the sanction level to 2/3 for the entire family. However, the highest sanction level of either parent will determine the entire sanction level for the family

3031.3 Initiating Work For Your Welfare—One Parent Families Reserved

3031.3.1 Families That Have A Forty-eight (48) Month Time Limit Who Are Continuously On Assistance: Reserved

DSS will alert single parent families to report to the work for your welfare contractor in the 22<sup>nd</sup> month of their receipt of benefits. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

Participants are to begin their work for your welfare assignment on the 12<sup>th</sup> of the 23<sup>rd</sup> month of benefit receipt. Participants will have until the 11<sup>th</sup> of their 24<sup>th</sup> month to complete their work for your welfare monthly assignment in order to receive a benefit for their 25<sup>th</sup> month. Otherwise, DSS will reduce benefits for the 25<sup>th</sup> month based on any hours not worked.

FOR EXAMPLE: Mary Jones is a single parent receiving benefits. September 1998 is her 22<sup>nd</sup> month of TANF benefit receipt. On Post Adverse Action day in August, Mary's October benefit as well as her work for your welfare requirement is calculated. A letter is generated to Mary informing her that she must participate in work for your welfare beginning in October. The letter also informs her of the required hours per day she must complete, and that she will have from October 12<sup>th</sup> until November 11<sup>th</sup> to complete her assignment if she is to get benefits in December. If Mary does not complete any of her Work For Your Welfare hours, she receives no benefit for December and her case closes. In order for her to start receiving benefits again, Mary would have to agree to go to her assigned Work For Your Welfare work site, and cooperate by completing her assigned hours for up to two weeks. If she fails to do this, her case remains closed.

3031.3.2 Families That Have A Thirty-Six Month Time Limit And Families That Have A Forty-eight Month Time Limit Who Reapply On or After January 1, 2000 Reserved

DSS will alert single adult families to report to the work for your welfare contractor immediately after they are approved to receive benefits. Participants will be required to participate in the Work For Your Welfare program activities to receive benefits for the month following initial approval. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.

Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.

~~FOR EXAMPLE: Sammy Smith is a single parent who applied for and was approved to receive TANF on December 2, 2000. A letter is generated to Sammy informing him that he must participate in work for your welfare beginning the following month. The letter also informs him of the required hours per day he must complete, and that he will have from January 12<sup>th</sup> until February 11<sup>th</sup> to complete his assignment if he is to get benefits in March.~~

#### 3031.4 Initiating Work For Your Welfare - Two Parent Families

~~For two parent families, only one parent will have to complete a work for your welfare assignment. DSS will inform the family of their work for your welfare obligation once the family is eligible for benefits, usually within 30 days of the intake interview refer the family to the contractor at the time of application for TANF. In addition, the other parent in the family, unless exempt, must also participate in employment and training activities. Participation in Employment and Training for the required hours is required for two weeks prior to the receipt of benefits. Again, DSS will send a letter to the family instructing them that one parent must report to a work for your welfare assignment and the other parent must participate with the work for your welfare contractor in a component other than work for your welfare. The family must decide which parent will complete the work for your welfare assignment and which parent will participate in employment and training activities with the work for your welfare contractor. The failure to report to the contractor will result in a progressive 1/3 penalty for an employment and training activity. In addition, the parent who participates in the work for your welfare assignment must also complete 10 hours of job search approved employment related activities per week.~~

~~The following month is the first required month for which participation hours are calculated. DSS will calculate hours the same as it does for single parent families. That is, the parent in the two parent family must report by the 12<sup>th</sup> of the month and will have until the 11<sup>th</sup> of the following month to complete his/her work for your welfare hours.~~

~~For Example: Janet and Jim Roberts apply for cash assistance in October. By November DSS determines them eligible. The family decides that Jim will complete the Work For Your Welfare hours. Having calculated the hours Jim must complete, DSS sends them a letter instructing Jim that he has from November 12<sup>th</sup> until December 11<sup>th</sup> to complete his hours if the family is to receive benefits in January. In addition, the letter instructs Janet that she is to report to the Work For Your Welfare contractor to participate in a component other than Work For Your Welfare.~~

#### 3031.5 Ending a Work For Welfare Placement

Work for welfare placements will end when any of the following circumstances occur:

- The participant secures a full-time, non-subsidized job or a part-time, non-subsidized job of ~~25~~ 30 hours or more.
- The participant becomes exempt. Exemptions, however, can only occur if DSS declares participants unemployable, using the standard TANF definition for unemployable. In this case, DSS will transfer the participants to the Children's Program under TANF.
- The participant requests an end to benefits payments.
- When the time limit has been reached.

Note: Participants in either one parent or two parent households are exempt from work for your welfare participation if a parent is working ~~25~~ 30 or more hours per week in a non-subsidized job.

**8 DE Reg. 1024 (1/1/05)**

**8 DE Reg. 1618 (5/1/05)**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES

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

### Proposed Total Maximum Daily Loads (TMDLs) for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds, Delaware

#### NOTICE OF PUBLIC HEARINGS

##### Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct Public Hearings regarding Proposed Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Draft TMDL Regulations for these watersheds were published in the May 1, 2006 issue of the Delaware Register of Regulations and were reviewed during public workshops held in May, 2006. All comments received at the workshops and during the May 1 through 31 comment period were considered by the Department. Comments relative to the Blackbird Creek, Broadkill River, Cedar Creek, Leipsic River, Little Creek, Mispillion River, Smyrna River, and St. Jones River did not result in changes to the Draft TMDL Regulations. However, comments did result in enhancements to the technical support documents. Comments relative to Army Creek, Dragon Run Creek, and Red Lion Creek, as well as additional technical analyses, resulted in minor changes to the TMDL Regulations and enhancements to the technical support document. The revised proposed TMDL Regulations for the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds are published, following this notice, in this issue of the *Register*.

##### Possible Terms of the Agency Action

Following adoption of the Proposed TMDL Regulations, DNREC will develop Pollution Control Strategies (PCSs) designed to achieve the necessary load reductions. PCSs will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

##### 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.

##### Other Legislation That May be Impacted

None

##### Notice of Public Hearings and Comment Period

The Public Hearing for the proposed Broadkill River, Cedar Creek, and Mispillion River Watersheds will be held at 6:00 p.m., Tuesday, August 22, 2006 in Room 104, Cannon Lab, University of Delaware College of Marine Studies, Lewes, DE.

The Public Hearing for the proposed TMDLs for the Blackbird Creek, Leipsic River, Little Creek, Smyrna River, and St. Jones River Watersheds will be held at 6:00 p.m., Thursday, August 24, 2006 at the Delaware National Estuarine Research Reserve, 818 Kitts Hummock Road, Dover, DE.

The Public Hearing for the proposed TMDLs for the Army Creek, Dragon Run Creek, and Red Lion Creek Watersheds will be held at 6:00 p.m., Tuesday, August 29, 2006 at DNREC's Lukens Drive Building, 391 Lukens Drive, New Castle, DE.

The hearing records for these watersheds will remain open until 4:30 p.m., Friday, September 15, 2006. Please send written comments to 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) 739-9939, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). All written comments must be received by 4:30 p.m., Friday, September 15, 2006. Electronic submission is preferred.

Copies of the Proposed TMDL Regulations for these watersheds will be available as of Tuesday, August 1, 2006 on the Department's website ([www.dnrec.delaware.gov](http://www.dnrec.delaware.gov)) by clicking on "TMDLs" under "Information" or 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) 739-9939, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). Copies of the TMDL reports and technical support documents for these watersheds will be available on the Department's website as of Monday, August 14, 2006.

Prepared By:

John Schneider, Watershed Assessment Section, 739-9939

### **7416 Total Maximum Daily Loads (TMDLs) for the Army Creek Watershed, Delaware**

#### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Army Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

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 Army Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

#### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for Army Creek**

Article 1. The nonpoint source nitrogen load in the entire Army Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total nitrogen load of 24.3 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Army Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total phosphorous load of 2.04 pounds per day.

Article 3. The overall *enterococcus* bacteria load in the entire Army Creek watershed shall be reduced by 37 percent from the 1997-2005 baseline level.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Army Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

### **7420 Total Maximum Daily Loads (TMDLs) for the Dragon Run Creek Watershed, Delaware**

#### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Dragon Run Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

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 Dragon Run Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

## **2.0 Total Maximum Daily Loads (TMDLs) Regulation for Dragon Run Creek**

Article 1. The nonpoint source nitrogen load in the entire Dragon Run Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total nitrogen load of 79.7 pounds per day.

Article 2. The nonpoint source phosphorous load in the entire Dragon Run Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total phosphorous load of 4.25 pounds per day.

Article 3. The overall *enterococcus* bacteria load in the entire Dragon Run Creek watershed shall be reduced by 15 percent from the 1997-2005 baseline level.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Dragon Run Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

## **7424 Total Maximum Daily Loads (TMDLs) for the Red Lion Creek Watershed, Delaware**

### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of Red Lion Creek and several of its tributaries and ponds are impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported due to levels of these pollutants in these waterways.

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 Red Lion Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen, phosphorous, and *enterococcus* bacteria.

### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for Red Lion Creek**

Article 1. The nonpoint source nitrogen load in the entire Red Lion Creek watershed shall be reduced by 40 percent from the 2002-2005 baseline level. This shall result in a yearly-average total nitrogen load of 121.3 pounds per day.

Article 2. The overall phosphorous load in the entire Red Lion Creek watershed shall be reduced by 38 percent from the 2002-2005 baseline level. This shall result in a yearly-average total phosphorous load of 3.7 pounds per day.

Article 3. The overall *enterococcus* bacteria load in the entire Red Lion Creek watershed shall be reduced by 38 percent from the 1997-2005 baseline level.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Red Lion Creek.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

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# PROPOSED REGULATIONS

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## DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES DIVISION OF FAMILY SERVICES

### Office of Child Care Licensing

Statutory Authority: 29 Delaware Code, §9003; 31 Delaware Code, §§341-345  
(29 Del.C. §9003; 31 Del.C. §§341-345)

#### Requirements for Day Care Centers

**PLEASE TAKE NOTICE**, pursuant to 31 Del.C., Chapter 3, Subchapter III, Subsections 341-345, and 29 Del.C., Chapter 90, Subsection 9003 (7), Delaware's Office of Child Care Licensing is proposing to revise the *Delacare: Requirements For Day Care Centers* that were previously adopted in 1988. From September of 2001 to February of 2003, a task force consisting primarily of early care and education and school-age care program directors along with Licensing Specialists and those whose interests could be affected by the rule changes reviewed the proposed revisions and reached consensus on each rule. Those proposed changes were first presented in early 2004. At the conclusion of those public hearings, a decision was made to withdraw the revisions and conduct a financial analysis on the impact of the rule changes. Based on the previous comments received from the first set of public hearing and the information gained through the financial analysis, compromises were made and a new version was developed. These proposed revisions represents the task force's and the Office of Child Care Licensing's efforts to improve standards based on what we have learned through research and experience since last revising this set of rules. Over the years, we have become increasingly aware of what children really need from early care and education and school-age care experiences to optimally develop, stay safe and healthy, and learn in order to be ready for and succeed in school. Also, as stated above, *Delacare: Requirements for Day Care Centers* were previously adopted in 1988. Currently this makes Delaware's Day Care Center rules the oldest in the United States. All other States have Day Care Center rules that have been revised or readopted sooner than 1988.

The proposed changes are available for review (see the "*Registrar of Regulations*" version) on the Office of Child Care Licensing's website at <http://www.state.de.us/kids/occl/occl.shtml>

Written comments or emails on the rule changes will be accepted until September 22, 2006 and should be addressed to the **Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk, Rule Development Manager** or emailed to [lynn.jezyk@state.de.us](mailto:lynn.jezyk@state.de.us). Comments will also be heard at public hearings scheduled as follows:

#### Public Hearing Schedule

- Monday, September 11, 2006, 7:00PM to 9:00P at Newark United Methodist Church, 69 E. Main Street, Newark, DE 19711 (parking in the back of church)
- Wednesday, September 13, 2006, 7:00PM to 9:00PM at Stockley Center, All Stars Building, 26351 Patriot's Way, Georgetown, DE 19947
- Monday, September 19, 2006, 7:00PM to 9:00PM at Zion Lutheran Church, 2101 Lancaster Pike, Wilmington, DE 19805
- Thursday, September 21, 2006, 7:00PM to 9:00PM at Department of Natural Resources (DNREC) Auditorium, 89 Kings Highway, Dover, DE 19901

For information on cancellations of the Public Hearings due to bad weather or an unforeseen event, please check the Office of Child Care Licensing website, <http://www.state.de.us/kids/occl/occl.shtml> or call the Office of Child Care Licensing in Wilmington, 892-5800 or in Dover, 739-5487 or listen to your local radio station.

**\* PLEASE NOTE: DUE TO THE LENGTH OF THE PROPOSED REGULATION (*DELACARE: REQUIREMENTS FOR DAY CARE CENTERS*) THE FULL-TEXT IS NOT BEING PRINTED. FULL-TEXT COPIES OF THE REGULATIONS ARE AVAILABLE FROM THE REGISTRAR OR MAY BE VIEWED ON THE REGISTER OF REGULATIONS WEBSITE.**

A PDF VERSION OF THE REGULATION IS AVAILABLE AT [www.state.de.us/research/register/august2006/daycare.pdf](http://www.state.de.us/research/register/august2006/daycare.pdf)

**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION****500 Board of Podiatry**

Statutory Authority: 24 Delaware Code, Section 506(a)(1) (24 **Del.C.** §506(a)(1))  
24 **DE Admin. Code** 500

**PUBLIC NOTICE**

PLEASE TAKE NOTICE, pursuant to Title 29, Chapter 101 and Title 24, Section 506(a)(1) of the **Delaware Code**, the State Board of Podiatry proposes changes to its Regulations 5.0 and 6.0 relating to In-Training licensure and online license renewal. Specifically, the changes to Regulation **5.0 Licenses (Renewal, Inactive, Temporary)** provide for the new In-Training license in Title 24, Section 513(d) of the **Delaware Code** created by Senate Bill 32 and signed into law on February 1, 2006. The changes to Regulation **6.0 Continuing Education** provide for the online renewal of licenses, including the attestation of completion of continuing education requirements by licensees and the post-renewal random audit of licensees by the Board to check the veracity of attestations. Regulation **5.2.4** was created in relation to online renewal. Other grammatical, typographic, or stylistic changes are also included.

A public hearing will be held on the proposed regulations on Thursday, September 21, 2006 at 5 p.m. in the 2<sup>nd</sup> floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Board in care of Sherry Clark at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sherry Clark at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

**500 Board of Podiatry***(Break in Continuity of Sections)***5.0 Licenses (~~In-Training, Lapse/Renewal, Inactive, Temporary~~)****5.1 ~~In-Training License.~~**

**5.1.1** Pursuant to 24 **Del.C.** §513(d), the Board will issue, without examination, an In-Training license to podiatric physicians who are (1) participating in this State in a residency program accredited by the Council on Podiatric Medical Education and (2) are otherwise qualified for licensure.

**5.1.2** A podiatric physician who will be employed by a hospital as a resident or fellow in an accredited residency or fellowship program may apply for an In-Training license. Application shall be made on forms provided by the Board. Such applications shall include:

**5.1.2.1** An affidavit of the employer hospital's residency program director certifying that the podiatric physician will be employed by the hospital and meets all requirements for licensure specified in 24 **Del.C.** §508(a)(1) through (a)(7), excluding 24 **Del.C.** §508(a)(2).

**5.1.2.2** An affidavit of the podiatric physician seeking licensure certifying that he meets all the requirements for licensure specified in 24 **Del.C.** §508(a)(1) through (a)(7), excluding 24 **Del.C.** §508(a)(2).

**5.1.2.3** An affidavit of the podiatric physician seeking licensure certifying that he intends to limit himself solely to practice within the hospital or the performance of such medical duties outside the hospital which may be assigned to him as part of the residency program.

**5.1.3** Residents employed by accredited hospitals who have been granted In-Training licenses shall be specifically limited to the practice of medicine within the hospital where they are employed, except for any medical duties which may be assigned as part of the residency program as long as those outside duties are performed under the supervision of a fully licensed podiatric physician.

**5.1.4** An In-Training license is required for all podiatric physicians who will spend 45 or more consecutive days in a Delaware institution as part of a rotation for an out-of-state residency program.

**5.1.5** The licensee and the employer hospital shall notify the board not later than three (3) days after the licensee's completion of or withdrawal from the residency program.

5.1.6 Valid In-Training licenses may be renewed by the licensee by paying the renewal fee set by the Division of Professional Regulation.

5.42 Renewal/Lapse/Renewal

5.42.1 Any licensee whose license lapses for non-renewal may re-apply within one (1) year by paying the fee required by 24 ~~Del.C.~~ §511 and having completed all continuing education which a licensee would have been required to complete for renewal.

5.42.2 If a licensee allows his or her license to lapse for over one (1) year and has not been granted inactive status, that licensee must reapply for licensure in the same manner as a new applicant.

5.42.3 It shall be the responsibility of all licensees, active or inactive, to keep the Board informed of any change in name, home or business address.

5.2.4 License renewal may be accomplished online at <http://www.dpr.delaware.gov>.

5.23 Inactive Status

5.23.1 A licensee may be placed ~~in on~~ an inactive status by the Board for a period of no more than five (5) years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one (1) year shall be renewed biennially at the time of regular license renewals, ~~set by the Division.~~ ~~Upon~~ After application to the Board and payment of a renewal fee, an inactive licensee may obtain a new license and re-enter active practice ~~upon~~ after completion of the continuing education requirements below. ~~The following continuing education must be completed prior to the licensee reentering active practice:~~

5.23.1.1 Inactive status for one (1) year or less: 16 CE hours.

5.23.1.2 Inactive status for more than one (1) year ~~up to 5 years~~: 32 CE hours, completed within 24 months prior to reapplication.

~~5.3 Temporary License. In the case of a temporary license issued to a qualified applicant for licensure in this state pending the results of the PMLexis examination, it is the duty of the applicant to inform the Board of his or her examination results immediately upon their receipt.~~

## 6.0 Continuing Education

6.1 ~~Pursuant to 24 Del.C. §506(a)(7), the Board is empowered to provide by rule for continuing medical education.~~ "Continuing medical education (CME)," as that term is herein applied by the Board, includes any and all continuing education requirements, as herein below provided, which must be satisfied biennially by all licensed practitioners as a condition for licensure renewal. Each licensed practitioner shall complete, biennially on or before the last day in April every two (2) years, at least 32 hours of continuing education as a condition of license renewal.

6.2 Each practitioner shall be exempt from the continuing education requirement in the first biennial licensing period, or any portion thereof, in which he is licensed to practice in Delaware. ~~On or before the last day in April every two (2) years, During the renewal process, each a practitioner shall submit to the Board validated documents which evidence attest to his~~ satisfactory completion of the continuing education requirements for the previous two (2) years. Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted. Each licensee must complete maintain a Podiatry CME log, on a form to be supplied by the Board, indicating the date, title, sponsor, and number of hours the licensee attended, for each continuing education program submitted for credit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit validated documents which evidence satisfactory completion of the continuing education requirements for the previous two (2) years. The Board reserves the right to request additional documentation, such as copies of program materials, to verify CME compliance in the course of a random audit.

6.3 Only approved courses will be counted toward the 32 hour biennial continuing education requirement. A practitioner may gain approval of any course or program by written application to the Board, stating the title, sponsor and summary of course content. The Board may act upon all such requests at the next regularly scheduled meeting, may act upon such requests at any intervening special meeting convened to consider other issues, or may delegate to any member of the Board the authority to approve continuing education courses on behalf of the Board. Any practitioner who attends ~~and/or~~ completes a course which has not yet been approved by the Board does so at his own risk that the Board may not approve the said course nor allow it to be counted toward completion of the annual requirement of 32 hours of continuing education.

6.4 Content. The overriding consideration in determining if a specific program qualifies for continuing ~~professional~~ education is that it be a formal program of learning which contributes directly to the professional competence of the licensee. No credit shall be given for business or practice seminars.

6.4.1 Computer, television or video based courses and other independent study courses may be submitted to the Board for approval, however no such course will be approved for credit unless it includes successful completion of a final examination or paper.

6.4.2 The following programs will be deemed to qualify for continuing education without prior Board approval:

6.4.2.1 Any program approved by the American Podiatric Medical Association (APMA), and approved affiliates.

6.4.2.2 Any seminar sponsored by the Delaware Podiatric Medical Association (DMPA).

6.4.2.3 Any podiatric program sponsored by a hospital or clinic as part of a CPME approved residency program.

6.5 Hardship. The Board has the authority to make exceptions to the continuing professional education requirements upon written request of the licensee and a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, military service, foreign residency, and retirement. Upon application, the Board shall set the time in which the licensee must complete the continuing education requirement. No extension shall be granted for more than 120 days after the end of the licensing period.

6.6 Self-directed activity

6.6.1 The Board may, upon request, review and approve credit for self-directed activities, including research, preparation and/or presentation of professional papers and articles, to a maximum of eight (8) 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.

6.6.2 The Board may award up to a maximum of eight (8) continuing education hours for the first-time preparation and presentation of an approved podiatric clinical course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

Statutory authority: 24 Del.C. §§506(a)(7).

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

**<http://www.state.de.us/research/AdminCode/title24/500%20Board%20of%20Podiatry.shtml>**

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## DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

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

24 DE Admin. Code 2500

### PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to Title 29, Chapter 101 and Title 24, Section 2509 of the **Delaware Code**, the State Board of Pharmacy proposes changes to its regulations affecting the licensure of wholesale distributors. The proposed changes to **8.0 Requirements for Obtaining a Permit to Distribute Drugs on a Wholesale Basis** were prompted by recent changes in the National Association of Boards of Pharmacy's Model Rules for the Licensure of Wholesale Distributors (Model Rules). The proposed changes incorporate some but not all of the changes to the Model Rules. A few minor grammatical, typographic, or stylistic changes are also included.

A public hearing will be held on the proposed regulations on Wednesday, September 20, 2006 at 9:30 a.m. in the 2<sup>nd</sup> floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Board in care of Mariah Krass at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations

or to make comments at the public hearing should contact Mariah Krass at the above address or by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

## 2500 Board of Pharmacy

### (Break in Continuity of Sections)

#### 8.0 Requirements for Obtaining a Permit to Distribute Drugs on a Wholesale Basis

8.1 Purpose. ~~The purpose of this regulation is to implement the provisions of the prescription Drug Marketing Act of 1987 by defining the minimum standards, terms, and conditions for which a permit may be issued to persons who engage in wholesale distribution of (prescription) drugs within the State of Delaware.~~

8.21 Definitions. The following words and terms, when used within Regulation 8.0, shall have the following meaning unless the context clearly indicates otherwise:

~~“Blood” means whole blood collected from a single donor and processed either for transfusion or further manufacturing.~~

~~“Blood Component” means that part of blood separated by physical or mechanical means.~~

~~“Drug Sample” means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.~~

“Entity” means an individual, partnership, corporation, business firm, or a sole proprietorship.

~~“Manufacturer” means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, or packaging, repackaging, or labeling of a prescription drug.~~

~~“Person” means an individual, partnership, corporation, business firm, or a sole proprietorship.~~

~~“Prescription Drug” means any drug required by Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.~~

~~“Wholesale Distribution” means distribution of prescription drugs to persons an entity other than a consumer or patient, ~~but~~ and does not include:~~

- ~~“Intracompany Sales”, being defined as a~~Any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity;
- The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;
- The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization ~~described as defined~~ in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
- The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; ~~f~~For purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of ~~a person~~ an individual or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;
- The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; ~~f~~For purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed ~~five (5) percent~~ 5.0% of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12 consecutive month period;
- The sale, purchase, ~~or~~ or trade, or dispensing of a drug; or an offer to sell, purchase, or trade a drug, ~~or the dispensing of a drug pursuant to a prescription;~~
- The distribution of drug samples by manufacturers' representatives or distributors'

representatives; or

- The sale, purchase, or trade of blood and blood components intended for transfusion. For purposes of this section, “blood” means whole blood collected from a single donor and processed either for transfusion or further manufacturing, and “blood component” means that part of blood separated by physical or mechanical means.

**“Wholesale distributor”** means anyone engaged in wholesale distribution of prescription drugs, including but not limited to: manufacturers; reverse distributors; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions.

~~8.3 Permit Requirements. Every wholesale distributor located in the State of Delaware who engages in wholesale distribution out of or within this State will be issued a permit by the Delaware Board of Pharmacy in accordance with the laws and regulations of this State before engaging in wholesale distribution of prescription drugs.~~

~~8.4 Wholesale Distributor Permit Requirement~~

~~8.4.1 The Delaware Board of Pharmacy requires the following from each wholesale drug distributor as part of the initial permit procedure and as part of any renewal of such permit:~~

~~8.4.1.1 The name, full business address, and telephone number of the permittee;~~

~~8.4.1.2 All trade or business names used by the permittee;~~

~~8.4.1.3 Addresses, telephone numbers, and the names of contact persons for the facility used by the permittee for the storage, handling, and distribution of prescription drugs;~~

~~8.4.1.4 The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship); and~~

~~8.4.1.5 The name(s) of the owner and/or operator of the permittee, including:~~

~~8.4.1.5.1 If a person, the name of the person;~~

~~8.4.1.5.2 If a partnership, the name of each partner, and the name of the partnership;~~

~~8.4.1.5.3 If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the State of incorporation, and the name of the parent company, if any;~~

~~8.4.1.5.4 If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.~~

~~8.4.1.6 Submission of a policy and procedures manual pertinent to employee qualifications and training.~~

~~8.4.2 Changes in any information in this section shall be submitted to the Board of Pharmacy within 30 days after such change.~~

8.2 Requirements for Licensure. Wholesale distributors that operate within this State, whether or not the wholesale distributor is physically located within this State, shall be licensed by the Board and shall biennially renew their license using an application provided by the Board. Wholesale distributors cannot operate from a place of residence. Where wholesale distribution operations are conducted at more than one location, each such location shall be licensed by the Board.

8.2.1 Wholesale distributors shall provide information required by a Board-approved application, including but not limited to:

8.2.1.1 All trade or business names used by the licensee, e.g. “doing business as” or “formerly known as” Trade or business names cannot be identical to the name used by another, unrelated wholesale distributor licensed to purchase drugs in the State;

8.2.1.2 Name of the owner or owners and operator or operators of the licensee (if not the same entity), including:

8.2.1.2.1 If an individual: the full name, business address, Social Security number, and date of birth;

8.2.1.2.2 If a partnership: the full name, business address, Social Security number, and date of birth of each partner; the name of the partnership; and the partnership’s federal employer identification number;

8.2.1.2.3 If a corporation: the full name, business address, Social Security number, date of birth, and title of corporate officers and directors; the corporate name or names; the name of the state

## PROPOSED REGULATIONS

of incorporation; the corporation's federal employer identification number; the name of the parent company, if any; and the full name, business address, and Social Security number of each shareholder owning 10% or more of the voting stock of the corporation, including over-the-counter (OTC) stock, unless the stock is traded on a major stock exchange and not OTC;

8.2.1.2.4 If a sole proprietorship: the full name, business address, Social Security number, and date of birth of the sole proprietor; and the name and federal employer identification number of the business entity;

8.2.1.3 A copy of the wholesale distributor's written policies and procedures as required in Section 13 (Policies and Procedures).

8.2.1.4 A list of all state and federal licenses, registrations, or permits, including the license, registration, or permit numbers, authorizing the wholesale distributor to purchase, possess, and distribute drugs;

8.2.1.5 A list of all disciplinary actions by state and federal agencies against the wholesale distributor, as well as any actions against principals, owners, directors, or officers;

8.2.1.6 A plan and full description of each facility and warehouse, including all locations utilized for drug storage, distribution, or both. The description should include the following:

8.2.1.6.1 square footage;

8.2.1.6.2 security and alarm system descriptions;

8.2.1.6.3 terms of lease or ownership;

8.2.1.6.4 quarantined area for damaged, outdated, deteriorated, misbranded,

or adulterated drugs; and

8.2.1.6.5 temperature and humidity controls.

8.2.1.7 A copy of the deed or lease for the property on which the wholesale distributor's establishment is located. If leased, the lease must be for an original term of not less than one (1) calendar year.

8.2.2 Changes in any information required by section 8.2.1 shall be submitted to the Board within 30 days after such change.

8.2.3 Wholesale distributors shall submit an application fee to be determined by the Division of Professional Regulation.

8.2.4 Wholesale distribution facilities must undergo an inspection by the Board or its authorized agent prior to initial licensure and periodically thereafter in accordance with a schedule to be determined by the Board. Subsequent inspections will occur at least once every three (3) years. Manufacturing facilities are exempt from inspection by the Board if the Manufacturing facilities are currently registered with the Food and Drug Administration in accordance with Section 510 of the Federal Act.

8.2.5 Wholesale distributors must publicly display or have readily available all licenses and the most recent inspection report administered by the Board.

8.2.6 All out-of-state wholesale distributors must comply with all rules and regulations of the State in which they are physically located and permitted.

8.2.7 Information submitted to the Board or its authorized agent that is considered trade secret or proprietary information as defined under Delaware privacy, trade secret, and proprietary information laws shall be maintained accordingly and as required by law and be exempt from public disclosure.

8.53 Minimum Qualifications. The Delaware Board of Pharmacy will consider the following factors in determining eligibility for granting a permit to persons who engage in the wholesale distribution of prescription drugs:

8.53.1 Any findings by the Board that the applicant has violated or been disciplined by a regulatory agency in any state for violating convictions of the applicant under any Federal, State, or local laws relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

8.53.2 Any felony criminal convictions of the applicant under Federal, State, or local laws;

8.53.3 The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

8.53.4 The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

8.53.5 Suspension, sanction, or revocation by Federal, State, or local government of against any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances or any of its owners for violations of any federal, state, or local laws relating to drugs;

8.53.6 Compliance with the requirements of this regulation under previously granted permits if any licenses of any kind;

~~8.5.3.7~~ Compliance with the requirements to maintain and/or make available to the ~~State~~ Board authority or to ~~Federal, State, or local law enforcement officials~~ those records required to be maintained by wholesale drug distributors.

~~8.3.8~~ Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

~~8.3.9~~ The Board shall consider the results of a criminal and financial background check of the applicant to determine if an applicant or others associated with the ownership, management, or operations of the wholesale distributor have committed criminal acts that would constitute grounds for denial of licensure. The background check shall include all key personnel involved in the operations of the wholesale distributor. Key personnel includes, but is not limited to: the most senior individual or individuals responsible for facility operations, purchasing, and inventory control and the individual or individuals he or they report to; company officers; key management; principals, and; owners with 10% or greater ownership interest in the company (applying to non-publicly held companies only). The background check will be conducted in compliance with any applicable federal, state, or local laws. The background check will be conducted at the applicant's expense and will be sufficient to include all states of residence since the individuals have been adults. Manufacturers shall be exempt from criminal and financial background checks.

~~8.6.4~~ Personnel. As a condition for receiving and retaining a wholesale drug distributor ~~permit license~~, the ~~permittee licensee~~ shall:

~~8.4.1~~ ~~Require each person individual~~ employed in any prescription drug wholesale distribution activity to have ~~any combination of~~ education, training, and experience, ~~or any combination thereof~~, sufficient for that ~~person individual~~ to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety, and security will at all times be maintained as required by law.;

~~8.4.2~~ ~~The permittee must maintain~~ records evidencing that each employee has been trained in accordance with the policy and procedure manual approved at the time of the issuance of the ~~permit license~~. These records shall be kept two (2) years from the date of separation of the employee from the company. Records on all current employees shall be available at any time for inspection. ;

~~8.4.3~~ Designate a registered agent in this State for service of process. Any licensed wholesale distributor that does not so designate a registered agent shall be deemed to have designated the Secretary of State of Delaware to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed wholesale distributor growing out of or arising from such distribution. A copy of any such service of process shall be mailed to such wholesale distributor by the Board by certified mail, return receipt requested, postage prepaid, at the address such licensed wholesale distributor has designated on its application for licensure in Delaware. If any such wholesale distributor is not licensed in Delaware, service on the Secretary of State only shall be sufficient service.

~~8.7~~ Facilities. ~~All facilities at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:~~

~~8.7.1~~ ~~Be of suitable size and construction to facilitate cleaning, maintenance and proper operations.~~

~~8.7.2~~ ~~Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.~~

~~8.7.3~~ ~~Have a quarantined area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated.~~

~~8.7.4~~ ~~Be maintained in a cleaned and orderly condition; and be free from infestation of insects, rodents, birds, or vermin of any kind.~~

~~8.8~~ Storage. ~~All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).~~

~~8.8.1~~ ~~If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.~~

~~8.8.2~~ ~~Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs.~~

~~8.9~~ Record Keeping Requirements. ~~Wholesale drug distributors shall establish and maintain inventory and records. Records shall include the following information:~~

~~8.9.1 Sources of the drugs, the identity and quantity of the drugs received and distributed or disposed of, and the date of receipt and distribution or other disposition of the drugs.~~

~~8.9.2 Records for all personnel and training.~~

~~8.9.3 All inventories and records shall be made available for inspection and photocopying by authorized Federal, State, or Local law enforcement agency officials for a period of two years following the disposition of the drugs.~~

~~8.9.4 Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days of a request by an authorized official of a Federal, State, or local law enforcement agency.~~

~~8.10 Written Policies and Procedures~~

~~8.10.1 There shall be written policies and procedures which shall be followed for the receipt, security, storage, inventory, and distribution of drugs including policies for identifying, recording, and reporting losses or thefts, and for correcting all errors, inaccuracies, and inventories. There shall be:~~

~~8.10.1.1 A procedure whereby the oldest approved stock of a drug product is distributed first. Deviation from this requirement is permitted if such deviation is temporary and appropriate.~~

~~8.10.1.2 A procedure must be established for the handling of recalls and withdrawals of manufacturer/distributor drugs due to any action initiated at the request of the manufacturer, the FDA or other Federal, State, or local enforcement or government agencies.~~

~~8.10.1.3 A procedure whereby drugs that are outdated, damaged, deteriorated, misbranded or adulterated are physically separated until they are destroyed or returned to their supplier.~~

~~8.11 Salvaging and Reprocessing. Compliance with applicable Federal, State, or local law or regulations relating to drug product salvaging is required.~~

~~8.12 Security~~

~~8.12.1 All facilities shall be secured from unauthorized entry.~~

~~8.12.2 The outside of the premises shall be well lighted.~~

~~8.12.3 Entry into areas where drugs are held shall be limited to authorized personnel.~~

~~8.12.4 All facilities shall be equipped with an alarm system to detect entry after hours subject to approval by the Secretary of the Board.~~

~~8.12.5 There must be a security system that will provide suitable protection against theft and diversions. When appropriate, the system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~

8.5 Minimum Requirements for the Storage and Handling of Drugs and for Establishment and Maintenance of Drug Records. The following are required for the storage, handling, transport, and shipment of drugs and for the establishment and maintenance of wholesale distribution records by wholesale distributors and their officers, agents, representatives, and employees:

8.5.1 All facilities at which drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:

8.5.1.1 Be of suitable construction to ensure that all drugs in the facilities are maintained in accordance with the product labeling of such drugs or in compliance with official compendium standards such as the *United States Pharmacopeia-USP/NF*;

8.5.1.2 Be of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;

8.5.1.3 Have adequate storage areas that provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions. If no storage requirements are established for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

8.5.1.4 Have a quarantine area for storage of drugs that are: outdated; damaged; deteriorated; misbranded; adulterated; counterfeit, or suspected of being counterfeit; otherwise unfit for distribution; or are in immediate or sealed secondary containers that have been opened;

8.5.1.5 Be maintained in a clean and orderly condition;

8.5.1.6 Be free from infestation of any kind;

8.5.1.7 Be a commercial location and not a personal dwelling or residence;

8.5.1.8 Provide for the secure and confidential storage of information with restricted access by developing and adhering to policies and procedures to protect the integrity and confidentiality of the information;

8.5.1.9 Maintain records of sources of the drugs, the identity and quantity of the drugs received and distributed or disposed of, and the date of receipt and distribution or other disposition of the drugs;

8.5.1.10 Maintain records of all personnel and their training; and

8.5.1.11 Have records available for inspection and photocopying by the authorized federal, state, or local law enforcement agency officials for a period of three (3) years following the disposition of the drugs. Records shall be kept at the inspection site or must be immediately retrievable by computer or other electronic means. Records may be kept at a central location apart from the inspection site and not electronically retrievable. Such records shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

8.5.2 Wholesale distributors involved in the distribution of controlled substances shall be duly registered with Drug Enforcement Administration (DEA) and the Office of Narcotics and Dangerous Drugs (ONDD) and in compliance with all applicable laws and rules for the storage, handling, transport, shipment, and distribution of controlled substances.

8.6 Written Policies and Procedures. Wholesale distributors shall establish, maintain, and adhere to written policies and procedures for the receipt, security, storage, inventory, transport, shipping, and distribution of drugs. Wholesale distributors shall also establish, maintain, and adhere to written policies and procedures for: identifying, recording, and reporting losses or thefts; for correcting all errors and inaccuracies in inventories; and implementing and maintaining a continuous quality improvement system. Wholesale distributors shall include in their written policies and procedures the following:

8.6.1 A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

8.6.1.1 Any action initiated at the request of FDA or any other federal, state, local law enforcement, or other government agency including the Board;

8.6.1.2 Any volunteer action by the manufacturer to remove defective or potentially defective drugs from the market; or

8.6.1.3 Any action undertaken to promote public health and safety by the replacing of existing merchandise with an improved product or new package design.

8.6.2 A procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of a strike, fire, flood, other natural disaster, or other situations of local, state, or national emergency.

8.6.3 A procedure to ensure that any outdated drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed in accordance with federal, state, or local laws, including all necessary documentation and the appropriate witnessing. This procedure shall provide for written documentation of the disposition of outdated drugs. This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

8.6.4 A procedure for the destruction of outdated drugs in accordance with federal, state, or local laws. The procedure shall include maintaining all necessary documentation for a minimum of three (3) years, and the appropriate witnessing of the destruction of outdated or expired drugs in accordance with all applicable federal, state, or local requirements.

8.6.5 A procedure for reporting criminal or suspected criminal activities involving the inventory of a drug or drugs to the Board, FDA, and, if applicable, DEA and ONDD, within three (3) business days.

8.7 Salvaging and Reprocessing. Wholesale distributors shall be subject to the provisions of any applicable federal, state, or local laws or rules that relate to drug product salvaging or reprocessing, including Chapter 21, parts 207, 210, and 211k of the Code of Federal Regulations.

8.8 Security and Anti-Counterfeiting. All facilities:

8.8.1 Shall be secure from unauthorized entry;

8.8.1.1 Access from outside the premises shall be kept to a minimum and be well-controlled.

8.8.1.2 The outside perimeter of the premises shall be well-lighted, and

8.8.1.3 Entry into areas where drugs are held shall be limited to authorized personnel.

8.8.2 Shall be equipped with a security system that will provide suitable protection against theft and diversion. Appropriateness of security systems is subject to approval by the Board's Executive Secretary. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records;

8.8.3 Shall be equipped with inventory management and control systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting;

8.8.4 Should possess and maintain, in good working order, technology and equipment that allows the wholesale distributor to authenticate, track, and trace prescription drugs. The technology and equipment shall satisfy standards set by the Board. The technology and equipment shall be used to conduct tracking, tracing, and authentication of prescription drugs. Wholesale distributors shall employ, train, and document the training of personnel in the proper use of such technology and equipment; and

8.8.5 Shall be equipped with security systems to protect the integrity and confidentiality of data and documents and make such data and documents readily available to the Board and other federal, state, or local law enforcement officials.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the regulations for the State Board of Pharmacy is available at:  
<http://dpr.delaware.gov/boards/pharmacy/index.shtml>**

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### **DIVISION OF PROFESSIONAL REGULATION**

**2600 Delaware Examining Board of Physical Therapists and Athletic Trainers**

Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 Del.C. §2604(a)(1))

**24 DE Admin. Code 2600**

### **PUBLIC NOTICE**

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 Del.C. §2604(a)(1) has proposed changes to its rules and regulations to allow for online renewal of licenses and online attestation of completion of continuing education units. The proposed changes also revise the Mandatory Continuing Education Unit ("CEU") deadline and the license renewal deadline to correspond, so that CEU's must be completed before January 31 of any odd numbered year, the same date that licenses are renewed. Furthermore, the proposed revisions allow for flexibility in changing Board-approved independent agencies that may evaluate the credentials of foreign trained applicants by removing the names and addresses of those agencies from the regulations. Finally, the proposed changes revise Regulation 11.0 to correct a typographical error and to clarify that any applicant previously licensed in the State of Delaware who has allowed his or her license to lapse must complete 3.0 required CEU's to again obtain a Delaware license.

A public hearing will be held on September 12, 2006 at 5:00 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 Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

## 2600 Examining Board of Physical Therapists

### *(Break in Continuity of Sections)*

#### **6.0 Qualifications of Applicant (24 Del.C. §2606)**

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 Del.C. §2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.

6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, ~~evidence~~ attestation of continuing education courses as ~~provided~~ required by Section Rule 7.0.

#### **7.0 Mandatory Continuing Education Units (CEU's) (24 Del.C. §2607(a))**

7.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. Beginning in 2006, The Continuing Education Unit Activity Record (CEUAR) credits required CEU's shall be received at the Division of Professional Regulation, Dover, Delaware, completed no later than November 30<sup>th</sup> January 31 of every even odd-numbered year and every 2 years after such date. In the transition to the new timeframe, CEU's earned between December 1, 2006 and January 31, 2007 may be used for credit for the licensing period ending January 31, 2007 or for the licensing period ending January 31, 2009, but not both.

7.1.1 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU).

~~7.2~~ Individuals shall maintain the following items in order to receive credit for CEU's:

~~7.2.1 name of applicant seeking renewal~~

~~7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)~~

~~7.2.3 license number of applicant~~

~~7.2.4 proof of attendance at CEU course~~

~~7.2.5 date of CEU course~~

~~7.2.6 instructor(s) of CEU course~~

~~7.2.7 sponsor of CEU course~~

~~7.2.8 title of CEU course~~

~~7.2.9 number of hours of CEU course~~

~~7.3 Continuing Education Regulations, (24 Del.C. §2607(a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.~~

~~7.3.1 For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30<sup>th</sup> of each even year. CEU's completed before November 30<sup>th</sup> of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:~~

| <del>Odd Numbered Year</del>      | <del>Even Numbered Year</del>    |
|-----------------------------------|----------------------------------|
| <del>1/1 - 6/30 - 2.5 CEUs</del>  | <del>1/1 - 6/30 - 1.5 CEUs</del> |
| <del>7/1 - 12/31 - 2.0 CEUs</del> | <del>7/1 - 12/31 - .5 CEUs</del> |

~~7.1.2 CEU's shall not be carried over from one biennial period to the next.~~

~~7.1.3 CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:~~

~~7.1.3.1 If an applicant is granted a license during the first six months of a license period, between the dates of February 1 of an odd-numbered year and July 31 of that year, the new licensee must complete 2.5 CEUs.~~

~~7.1.3.2 If an applicant is granted a license during the second six months of a license period, between the dates of August 1 of an odd-numbered year and January 31 of an even-numbered year, the licensee must complete 2.0 CEUs.~~

~~7.1.3.3 If an applicant is granted a license during the third period of six months during a license period, between the dates of February 1 of an even-numbered year and July 31 of an even-numbered year, the licensee must complete 1.5 CEUs.~~

~~7.1.3.4 If an applicant is granted a license during the last period of six months during a license period, between the dates of August 1 of an even-numbered year and January 31 of an odd-numbered year, the licensee must complete .5 CEUs.~~

~~7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists.~~

~~7.2.1 Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's.~~

~~7.2.2 Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.~~

~~7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. The CEUAR is due November 30<sup>th</sup> of the even year. All questionable CEUAR's will be re-evaluated.~~

~~7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.~~

~~7.3-5~~ 2.3 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than ~~November 30<sup>th</sup>~~ January 31st of the end of the respective CEU term.

~~7.3-6~~ 2.4 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

~~7.3-7~~ 2.5 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

~~7.3-7-1~~ 2.5.1 professional meetings including national, state, chapter, and state board meetings

~~7.3-7-2~~ 2.5.2 seminars/workshops

~~7.3-7-3~~ 2.5.3 staff/faculty in-services

~~7.3-7-4~~ 2.5.4 first time presentation of professionally oriented course/lecture (0.3 CEU/hour per presentation)

~~7.3-7-5~~ 2.5.5 approved self studies including:

- videotapes, if:
- there is a sponsoring agency
- there is a facilitator or program official present
- the program official is not the only attendee
- correspondence course, if a sponsoring agency provides a certificate of completion

~~7.3-8~~ 2.6 The following are also examples of acceptable continuing education in the amount of CEU's shown.

~~7.3-8-1~~ 2.6.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

~~7.3-8-2~~ 2.6.2 passing of licensing examination (1.5 CEU's)

~~7.3-8-3~~ 2.6.3 original publication in peer reviewed publication (0.3 CEU)

~~7.3-8-4~~ 2.6.4 original publication in non-peer reviewed publication (0.1 CEU)

~~7.3-8-5~~ 2.6.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

~~7.3-8-6~~ 2.6.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution during an internship (40 contact hours = 0.1 CEU)

~~7.3-8-7~~ 2.6.7 acting as the direct clinical instructor providing supervision to an Athletic Training student officially enrolled in an accredited Athletic Training Education Program (40 contact hours = 0.1 CEU).

7.3 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 7.0.

7.3.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

7.3.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.4.

7.4 Random audits will be performed by the Board to ensure compliance with the CEU requirements.

7.4.1 The Board will notify licensees within sixty (60) days after January 31 that they have been selected for audit.

7.4.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

7.4.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CEU requirements in Section 7.2, which may include, but is not limited to, the following information:

7.4.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance:

7.4.3.2 Date of CEU course:

7.4.3.3 Instructor of CEU course:

7.4.3.4 Sponsor of CEU course:

7.4.3.5 Title of CEU course; and

7.4.3.6 Number of hours of CEU course.

**8 DE Reg. 1591 (5/1/05)**

*(Break in Continuity of Sections)*

**10.0 Foreign Trained Applicant for Licensure (24 Del.C. §2606 (b))**

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by ~~one of four~~ independent agencies an agency approved by the Board.

:

~~International Educational Research Foundation, Inc.  
P.O. Box 3665  
Culver City, CA 90234  
(Address change 2/1/01)~~

~~International Consultants of Delaware, Inc.  
109 Barksdale Professional Center  
Newark, DE 19711~~

~~Educational Credential Evaluators, Inc.  
P.O. Box 92970  
Milwaukee, WI 53202-0970~~

~~Foreign Credentialing Commission for Physical  
Therapists  
P.O. Box 25827  
Alexandria VA 22313-9998~~

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

**11.0 Reactivation and Reinstatement (24 Del.C. §2607)**

11.1 Any person who has been registered in the State and is not actively engaged in the practice of physical therapy or athletic training in the State may, upon request, be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 The Physical Therapist or Physical Therapist Assistant working in a clinical setting shall work under the direct supervision of a Physical Therapist in Delaware for a minimum of six months.

11.1.2.2 The Athletic Trainer shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application and provide proof of completion of 3.0 ~~DEU's~~ CEU's ~~when reapplying under the provisions which govern reciprocity.~~

**5 DE Reg. 2101 (5/1/02)**

**6 DE Reg. 189 (8/1/02)**

**8 DE Reg. 1591 (5/1/05)**

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Examining Board of Physical Therapists is available at: <http://dpr.delaware.gov/boards/physicaltherapy/index.shtml>**

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## DIVISION OF PROFESSIONAL REGULATION

3900 Delaware Board of Clinical Social Work Examiners

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 **Del.C.** §3906(a)(1))

24 **DE Admin. Code** 3900

### PUBLIC NOTICE

The Delaware Board of Clinical Social Work Examiners in accordance with 24 **Del.C.** §3906(a)(1) has proposed changes to its rules and regulations. The proposal amends Board Regulation 5.0: *Application and Examination*; Board Regulation 6.0: *Renewal*; Board Regulation 7.0: *Continuing Education*; Board Regulation 8.0: *Inactive Status*; and Board Regulation 11.0: *Crimes Substantially Related to the Practice of Social Work*. The regulations as amended would allow licensees the ability to renew their licenses online. In connection with the Board's decision to move to online renewal, the regulations change the time period for earning CE credits to be concurrent with the biennial licensing periods and change the time frame for the Board's audit of continuing education to occur after the license period expires. The regulations also clarify the circumstances under which the Board will approve certain continuing education hours, and require that all grants of inactive status expire on the same date each year. The changes also correct cross-references in the regulations and revise a citation in one item on the crime list for clarification.

A public hearing will be held on September 18, 2006 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulation may obtain a copy from the Delaware Board of Accountancy, 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.

**3900 Delaware Board of Clinical Social Work Examiners*****(Break in Continuity of Sections)*****5.0 Application and Examination**

5.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application documentation along with the proper fee to be eligible to sit for the examination.

5.2 The Board will not review incomplete applications.

5.3 All signatures must be original on all forms.

5.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASWB). The Board shall accept the passing grade as determined by the AASWB.

5.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del.C. § 3907(a)(1))

**7 DE Reg. 1667 (6/1/04)**

**6.0 Renewal**

6.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

6.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

**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 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.

7.1.3 No licensee shall earn more than ten (10) hours of continuing education credit from self-directed activity. The maximum number of hours granted for a particular type of self-directed activity is set forth below in Rule 7.2.6.4.

7.1.4 Any course or activity submitted for continuing education credit 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.

7.1.5 An "hour" for purposes of continuing education shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

7.1.6 Proration. License renewal periods last two complete calendar years, beginning February 1 and ending January 31 of odd-numbered years, for example, beginning February 1, 2007 and ending January 31, 2009. 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:

7.1.6.1 If the license was granted prior to July 1 of an odd-numbered year, the licensee must complete 35 hours of CE during his or her initial licensing period.

7.1.6.2 If the license was granted between July 1 of an odd-numbered year and January 31 of an even-numbered year, the licensee must complete 25 hours of CE during his or her initial licensing period.

7.1.6.3 If the license was granted between February 1 of an even-numbered year and June 30 of that year, the licensee must complete 15 hours of CE during his or her initial licensing period.

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7.1.6.4 If the license was granted between July 1 of an even-numbered year and January 31 of an odd-numbered year, the licensee must complete 5 hours of CE during his or her initial licensing period.

~~License Granted During First Credit Hours~~

~~Year Of Licensing Period Required~~

~~January 1—June 30 35 hours~~

~~July 1—December 31 25 hours~~

~~License Granted During Second Credit Hours~~

~~Year Of Licensing Period Required~~

~~January 1—June 30 15 hours~~

~~July 1—December 31 5 hours~~

~~7.1.37.1.7~~ 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.

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, as well as including acceptable self-directed activities as described herein.

7.2.2 The following types of courses are NOT acceptable for credit: business, computer, financial, administrative or practice development courses or portions of courses.

7.2.3 The Board will not "pre-approve" courses or activities for continuing education credit, except as provided in Rule 7.2.6 with respect to self-directed activities.

~~7.2.47.2.4~~ Approved Courses. 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.~~

7.2.5 Other Courses.

~~7.2.5.1~~ The Board will also accept Acceptable Courses, other than those approved pursuant to Rule 7.2.1.1, shall be courses which:

7.2.5.1.1 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

7.2.5.1.2 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.

~~7.2.1.37.2.5.2~~ For purposes of this Rule, "Mental and eEmotional dDisorders," "dDevelopmental dDisabilities" and "sSubstance aAbuse" 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.

~~7.2.27.2.6~~ Self-Directed Activities.

~~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.~~

~~7.2.2.1.1~~ 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

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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.

~~7.2.6.1 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 will accept a maximum of ten (10) continuing education credits for Self-Directed Activities. The maximum number of credits that will be granted for any particular self-directed activity is indicated in Rule 7.2.6.4 below.~~

~~7.2.6.2 To obtain credit for self-directed activity upon renewal of licensure, licensees shall retain. The Board shall require documentation of each activity as noted in Rule 7.2.6.4 below:~~

~~7.2.6.3 Pre-approval for self-directed activity.~~

~~7.2.6.3.1 Licensees may, but are not required to, seek approval of continuing education credit for self-directed activity PRIOR to undertaking the activity IF they submit the following information to the Board by at least two business days prior to a Board meeting preceding the activity. 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.~~

~~7.2.6.4 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:~~

~~7.2.2.1.1.7.2.6.4.1 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).; Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.~~

~~7.2.2.1.1.4 Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.~~

~~7.2.2.1.2.7.2.6.4.2 Publication of a professional clinical social work-related article or chapter of a book (maximum of 5 hours).; Required documentation shall be a reprint of the publication(s).~~

~~7.2.2.1.3 Required documentation shall be reprint of publication(s).~~

~~7.2.2.1.3.7.2.6.4.3 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). Required documentation shall be an outline, syllabus, agenda and objectives for the course, and verification that the course was presented;~~

~~7.2.2.1.4.1 Required documentation shall be outline, syllabus agenda and objectives for course and verification that the course was presented.~~

~~7.2.2.1.4.7.2.6.4.4 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). Required documentation shall be a letter of verification from the school for social work.;~~

~~7.2.2.1.5.1 Required documentation shall be a letter of verification from school of social work.~~

~~7.2.2.1.5.7.2.6.4.5 Participation in formal clinical staffings/staffing at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals (maximum of 5 hours). 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.;~~

~~7.2.2.1.5.2 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.~~

## 7.47.3 Continuing Education Reporting and Documentation

7.3.1 Continuing Education Reporting Periods. Licenses are valid for 2 year periods ending, renewing on January 31 of odd numbered years (e.g. January 31, 2005, 2007). Continuing education (CE) reporting periods run concurrently with the biennial licensing period. In the transition period, CE earned between November 1, 2006 and January 31, 2007 may be counted toward the required CE for the licensing period ending January 31, 2007 or the licensing period ending January 31, 2009, but not both, 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 7.1.77-1.3.

7.3.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 7.0.

7.3.2.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

7.3.2.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.3.3.3.

7.3.3 Random audits will be performed by the Board to ensure compliance with the CEU requirements.

7.3.3.1 The Board will notify licensees within sixty (60) days after January 31 that they have been selected for audit.

7.3.3.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

7.3.3.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Rule 7.0, which may include, but is not limited to, the following information:

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| <u>7.3.3.3.1</u> | <u>Proof of attendance:</u>                          |
| <u>7.3.3.3.2</u> | <u>Date of CE course:</u>                            |
| <u>7.3.3.3.3</u> | <u>Title of CE course:</u>                           |
| <u>7.3.3.3.4</u> | <u>Course agenda, brochure, outline or syllabus:</u> |
| <u>7.3.3.3.5</u> | <u>Instructor of CE course:</u>                      |
| <u>7.3.3.3.6</u> | <u>Sponsor of CE course:</u>                         |
| <u>7.3.3.3.7</u> | <u>Proof of clinical content; and</u>                |
| <u>7.3.3.3.8</u> | <u>Number of hours of CE course.</u>                 |

~~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 31<sup>st</sup> 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 775 (11/1/98)**

**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)**

**8 DE Reg 265 (8/1/05)**

## 8.0 Inactive Status (24 Del.C. §3911(c))

8.1 The Board's grant of inactive status to a licensee shall expire on the next January 31 without regard to the date inactive status was requested or granted. The Board may renew inactive status for additional one year periods. Any extension or renewal of inactive status shall expire on January 31.

8.2 Change from active to inactive status. A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. A licensee on inactive status must comply with Rule 7.0, "Continuing Education," for each period of inactivity.

8.3 Renewal of inactive status. Each subsequent request for extensions of inactive status must be submitted to the Board in writing, before the end of the immediately prior inactive period. Any renewal of inactive status shall expire on the next January 31.

~~8.4 A licensee on inactive status must comply with Rule 5.0, "Continuing Education," for each period of inactivity.~~ Change from inactive to active status. A licensee on inactive status seeking to re-enter practice may apply for a change of status in one of the following two ways:

8.4.1 Where the licensee on inactive status seeks to change to active status at the beginning of a new biennial licensure period (February 1 of an odd numbered year), the licensee may use the online renewal process to renew his license and resume active status.

8.4.2 At all other times during a biennial licensing period, an inactive licensee seeking to resume active practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation of any continuing education hours required by Rule 5-07.0.

~~8.3.5 On written request and a showing of hardship, as defined in Rule 7.1.7, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities.~~

**2 DE Reg 775 (11/1/98)**

**3 DE Reg 1680 (6/1/00)**

### *(Break in Continuity of Sections)*

## 11.0 Crimes substantially related to the practice of social work:

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of social work in the State of Delaware without regard to the place of conviction:

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|---------|---|
| 11.1.1  | Aggravated menacing. 11 Del.C. §602(b).   |
| 11.1.2  | Reckless endangering in the first degree. 11 Del.C. §604.   |
| 11.1.3  | Abuse of a pregnant female in the second degree. 11 Del.C. §605.  |
| 11.1.4  | Abuse of a pregnant female in the first degree. 11 Del.C. §606.   |
| 11.1.5  | Assault in the second degree. 11 Del.C. §612.   |
| 11.1.6  | Assault in the first degree. 11 Del.C. §613.  |
| 11.1.7  | Abuse of a sports official; felony. 11 Del.C. §614.   |
| 11.1.8  | Assault by abuse or neglect. 11 Del.C. §615.  |
| 11.1.9  | Terroristic threatening; felony. 11 Del.C. §621.  |
| 11.1.10 | Unlawfully administering drugs. 11 Del.C. §625.   |
| 11.1.11 | Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626. |
| 11.1.12 | Manslaughter. 11 Del.C. §632.   |
| 11.1.13 | Murder by abuse or neglect in the second degree. 11 Del.C. §633.  |
| 11.1.14 | Murder by abuse or neglect in the first degree. 11 Del.C. §634.   |
| 11.1.15 | Murder in the second degree. 11 Del.C. §635.  |
| 11.1.16 | Murder in the first degree. 11 Del.C. §636.   |
| 11.1.17 | Promoting suicide. 11 Del.C. §645.  |
| 11.1.18 | Abortion. 11 Del.C. §651.   |
| 11.1.19 | Incest. 11 Del.C. §766.   |
| 11.1.20 | Unlawful sexual contact in the third degree. 11 Del.C. §767.  |

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- 11.1.21 Unlawful sexual contact in the second degree. 11 **Del.C.** §768.
  - 11.1.22 Unlawful sexual contact in the first degree. 11 **Del.C.** §769.
  - 11.1.23 Rape in the fourth degree. 11 **Del.C.** §770.
  - 11.1.24 Rape in the third degree. 11 **Del.C.** §771.
  - 11.1.25 Rape in the second degree. 11 **Del.C.** §772.
  - 11.1.26 Rape in the first degree. 11 **Del.C.** §773.
  - 11.1.27 Sexual extortion. 11 **Del.C.** §776.
  - 11.1.28 Bestiality. 11 **Del.C.** §777.
  - 11.1.29 Continuous sexual abuse of a child. 11 **Del.C.** §778.
  - 11.1.30 Dangerous crime against a child. 11 **Del.C.** §779.
  - 11.1.31 Female genital mutilation. 11 **Del.C.** §780.
  - 11.1.32 Unlawful imprisonment in the first degree. 11 **Del.C.** §782.
  - 11.1.33 Kidnapping in the second degree. 11 **Del.C.** §783.
  - 11.1.34 Kidnapping in the first degree. 11 **Del.C.** §783A.
  - 11.1.35 Acts constituting coercion. 11 **Del.C. B.**
  - 11.1.36 Arson in the first degree. 11 **Del.C.** §803.
  - 11.1.37 Burglary in the third degree. 11 **Del.C.** §824.
  - 11.1.38 Burglary in the second degree. 11 **Del.C.** §825.
  - 11.1.39 Burglary in the first degree. 11 **Del.C.** §826.
  - 11.1.40 Possession of burglar's tools or instruments facilitating theft. 11 **Del.C.** §828.
  - 11.1.41 Robbery in the second degree. 11 **Del.C. B.**
  - 11.1.42 Robbery in the first degree. 11 **Del.C.** §832.
  - 11.1.43 Carjacking in the second degree. 11 **Del.C.** §835.
  - 11.1.44 Carjacking in the first degree. 11 **Del.C.** §836.
  - 11.1.45 Extortion. 11 **Del.C.** §846.
  - 11.1.46 Identity theft. 11 **Del.C.** §854.
  - 11.1.47 Forgery. 11 **Del.C.** §861.
  - 11.1.48 Falsifying business records. 11 **Del.C.** §871.
  - 11.1.49 Tampering with public records in the second degree. 11 **Del.C.** §873.
  - 11.1.50 Tampering with public records in the first degree. 11 **Del.C.** §876.
  - 11.1.51 Issuing a false certificate. 11 **Del.C.** §878.
  - 11.1.52 Criminal impersonation. 11 **Del.C.** §907.
  - 11.1.53 Criminal impersonation, accident related. 11 **Del.C.** §907A.
  - 11.1.54 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
  - 11.1.55 Insurance fraud. 11 **Del.C.** §913.
  - 11.1.56 Health care fraud. 11 **Del.C.** §913A.
  - 11.1.57 Misuse of computer system information. 11 **Del.C.** §935.
  - 11.1.58 Dealing in children. 11 **Del.C.** §1100.
  - 11.1.59 Endangering the welfare of a child. 11 **Del.C.** §1102.
  - 11.1.60 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105.
  - 11.1.61 Sexual exploitation of a child. 11 **Del.C.** §1108.
  - 11.1.62 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
  - 11.1.63 Possession of child pornography. 11 **Del.C.** §1111.
  - 11.1.64 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
  - 11.1.65 Sexual solicitation of a child. 11 **Del.C.** §1112A.
  - 11.1.66 Perjury in the second degree. 11 **Del.C.** §1222.
  - 11.1.67 Perjury in the first degree. 11 **Del.C.** §1223.
  - 11.1.68 Making a false written statement. 11 **Del.C.** §1233.
  - 11.1.69 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
  - 11.1.70 Assault in a detention facility; Class B felony. 11 **Del.C.** §1254.
  - 11.1.71 Sexual relations in a detention facility. 11 **Del.C.** §1259.
  - 11.1.72 Bribing a witness. 11 **Del.C.** §1261.
  - 11.1.73 Bribe receiving by a witness. 11 **Del.C.** §1262.
  - 11.1.74 Tampering with a witness. 11 **Del.C.** §1263.

- 11.1.75 Interfering with child witness. 11 **Del.C.** §1263A.  
 11.1.76 Bribing a juror. 11 **Del.C.** §1264.  
 11.1.77 Bribe receiving by a juror. 11 **Del.C.** §1265.  
 11.1.78 Tampering with physical evidence. 11 **Del.C.** §1269.  
 11.1.79 Criminal contempt of a domestic violence protective order. 11 **Del.C.** §1271A.  
 11.1.80 Hate crimes. 11 **Del.C.** §1304.  
 11.1.81 Aggravated harassment. 11 **Del.C.** §1312.  
 11.1.82 Stalking; felony. 11 **Del.C.** §1312A.  
 11.1.83 Cruelty to animals; felony. 11 **Del.C.** §1325.  
 11.1.84 Violation of privacy. 11 **Del.C.** §1335.  
 11.1.85 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.**  
 §1338.  
 11.1.86 Adulteration. 11 **Del.C.** §1339.  
 11.1.87 Promoting prostitution in the first degree. 11 **Del.C.** §1353.  
 11.1.88 Possessing a destructive weapon. 11 **Del.C.** §1444.  
 11.1.89 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.  
 11.1.90 Organized Crime and Racketeering. 11 **Del.C.** §1504.  
 11.1.91 Victim or Witness Intimidation 11 **Del.C.** §3532 & 3533.  
 11.1.92 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16  
**Del.C.** §1136(a), (b) and (c).  
 11.1.93 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a),  
 (b) and (c).  
 11.1.94 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a)  
 and (b).  
 11.1.95 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid  
 Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-  
 (9).  
 11.1.96 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.  
 11.1.97 Purchase of drugs from minors. 16 **Del.C.** §4761A.  
 11.1.98 Drug paraphernalia; delivery to a minor 16 **Del.C.** §4774 (c).  
 11.1.99 Obtaining benefit under false representation. 31 **Del.C.** §1003.  
 11.1.100 Reports, statements and documents. 31 **Del.C.** §1004.  
 11.1.101 Kickback schemes and solicitations. 31 **Del.C.** §1005.  
 11.1.102 Conversion of payment. 31 **Del.C.** §1006.  
 11.1.103 Driving a vehicle while under the influence or with a prohibited alcohol content; third  
 and fourth offenses. 21 **Del.C.** §4177(d)(3) and (4).  
 11.1.104 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581.  
 11.1.105 Prohibition of intimidation [under the Fair Housing Act]; felony. 6 **Del.C.** §4619.  
 11.1.106 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A.  
 11.1.107 Interception of Communications Generally; Divulging Contents of Communications. 11  
**Del.C.** §2402.  
 11.1.108 Manufacture, Possession or Sale of Intercepting Device. 11 **Del.C.** §2403.  
 11.1.109 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410.  
 11.1.110 Obstruction, Impediment or Prevention of Interception. 11 **Del.C.** §2412.  
 11.1.111 Obtaining, Altering or Preventing Authorized Access. 11 **Del.C.** §2421.  
 11.1.112 Divulging Contents of Communications. 11 **Del.C.** §2422.  
 11.1.113 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.**  
 §243.  
 11.1.114 Attempt to Intimidate. 11 **Del.C.** §3534.  
 11.1.115 Disclosure of Expunged Records. 11 **Del.C.** § 4374.  
 11.1.116 Providing false information when seeking employment in a public school. 11 **Del.C.**  
 §8572.  
 11.1.117 Failure of Physician to file report of abuse of neglect pursuant to 16 **Del.C.** §903.

- 11.1.118 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 **Del.C.** §2513 (b).
- 11.1.119 Failure of Physician to report persons subject to loss of consciousness. 24 **Del.C.** §1763.
- 11.1.120 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a), (b) and (c).
- 11.2 Crimes substantially related to the practice of social work shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**8 DE Reg. 1600 (5/1/05)**

**Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Clinical Social Work Examiners is available at: <http://dpr.delaware.gov/boards/socialworkers/index.shtml>.**

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## DIVISION OF PROFESSIONAL REGULATION

### 4400 Delaware Manufactured Home Installation Board

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 **Del.C.** §4416(b)(1))  
24 **DE Admin. Code** 4400

### PUBLIC NOTICE

The Delaware Manufactured Home Installation Board, in accordance with 24 **Del.C.** §4416(b)(1) has proposed the rules and regulations to implement the Manufactured Home Installation Act, 24 **Del.C.** §4400. A public hearing will be held on September 11, 2006 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Manufactured Home Installation Board, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

### 4400 Manufactured Home Installation Board

#### **1.0 License Required**

1.1 Only natural persons may be licensed by the Board.

1.2 No person shall install manufactured homes or represent themselves as qualified to install manufactured homes without first having been duly licensed unless specifically excepted by statute.

1.3 Exceptions.

1.3.1 No license is required for manufactured home installations performed by persons or entities working under the direct, on site supervision of a Delaware licensed manufactured home installer, as indicated in Section 4403(a)(10) and

1.3.2 "Installation", as defined in Section 4403(a)(7) includes the "process of affixing manufactured homes to the land by the use of . . . utilities." "Installation" does not include work which must, by law, be performed by persons engaged in other professions or occupations who are certified, licensed, or registered according to the law and act within the scope of activity for which they are licensed, certified or registered, such as HVAC installers, plumbers, electricians, well and septic installers.

**2.0 Applications**

2.1 All applications for licenses, certificates and renewal of licenses and certificates shall be submitted on forms approved by the Board.

2.1.1 Applications may be obtained over the Internet at the Division of Professional Regulation's website. Applications may also be obtained in person during regular business hours or by mail from the Division of Professional Regulation.

2.1.2 Renewal applications may be submitted in electronic form over the Internet. A licensee or certificate holder who does not have Internet access or otherwise wishes to renew in paper form must contact the Division to request a paper renewal application, and submit the renewal application sufficiently in advance of the renewal deadline to ensure that the license or certificate does not lapse.

2.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete until the Board has received all required and requested documents, materials, information and fees.

2.2.1 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must submit a new application with the appropriate fee.

2.2.2 Applicants must meet the requirements for license or certification at the time their applications are complete.

**3.0 License and Certificate Requirements**

3.1 Each applicant for a manufactured home installer license must provide the Board with the following, or have this information provided from the appropriate source, where indicated:

3.1.1 Evidence in a form satisfactory to the Board that the applicant has successfully passed the examination designated by the Board. Evidence shall include confirmation from the Division or other authorized testing agency that the applicant has achieved a passing score on the Board-approved examination.

3.1.2 Evidence in a form satisfactory to the Board that the applicant has completed education requirements set forth in Rule 4.0. Evidence shall include a certificate or other acknowledgement of completion of the education requirement that is submitted to the Board by the education provider. This document shall identify the course, the course provider and location, and the date completed.

3.1.3 Evidence in a form satisfactory to the Board that the applicant is at least 18 years old. Such evidence includes a certified copy of the applicant's birth certificate, a passport, an identification card issued by the State of Delaware or a driver's license issued by the State of Delaware.

3.1.4 Evidence in a form satisfactory to the Board that the applicant holds a performance bond in an amount of equal to or greater than \$10,000. Evidence shall include an acknowledgement submitted to the Board from the provider of the bond.

3.1.5 Evidence in a form satisfactory to the Board that the applicant carries liability insurance in an amount equal to or greater than \$100,000. Evidence shall include an acknowledgement submitted to the Board from the insurance carrier.

3.1.6 A statement under oath or other verification satisfactory to the Board that the applicant agrees to be responsible for all acts or omissions of any individual acting under the supervision of the applicant while assisting in the installation of manufactured housing.

3.1.7 Reciprocity

3.1.7.1 An applicant for licensure as a manufactured home installer by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of the reciprocal state's current licensure requirements

3.2 Each applicant for a certificate of manufactured home installation inspector must provide the Board with the following

3.2.1 A completed application on the form approved by the Board.

3.2.2 Evidence in a form satisfactory to the Board that the applicant has successfully completed the certification course designated by the Board. Evidence shall include a certificate or other acknowledgement of completion of the education requirement that is submitted to the Board by the education provider. This document shall identify the course, the course provider and location, and the date completed.

3.2.3 Evidence in a form satisfactory to the Board that the applicant is a full-time, part-time or casual/seasonal employee of an authorized inspection agency. Evidence shall include a current written statement signed by the applicant's supervisor in his capacity as a supervisor identifying the applicant's employment status and date of employment.

## **4.0 Education**

4.1 All applicants must successfully complete a Board-approved course to qualify for licensure or certification.

4.1.1 Training courses must provide at least fifteen (15) hours of education. An "hour" for purposes of this requirement shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

4.2 To be approved by the Board, training courses must address the following areas:

4.2.1 Federal statutes and regulations governing manufactured housing;

4.2.2 Manufacturer's installation manuals and requirements;

4.2.3 Preparation of manufactured housing stands;

4.2.4 Installation of foundation systems;

4.2.5 Blocking, perimeter support and leveling of manufactured homes;

4.2.6 Structural connections of sections and major components;

4.2.7 Installation of anchoring systems and components;

4.2.8 Installation of vapor barriers, curtain walls, access and ventilations for crawl space areas; and

4.2.9 Connections of other nonstructural components.

## **5.0 Examination**

5.1 An applicant for licensure as a manufactured home installer shall obtain a grade of 70% on the Board-approved examination to qualify for licensure.

5.2 Applicants may use the following three reference materials during the examination:

5.2.1 A Board-approved reference manual;

5.2.2 The Statute governing this Board, Title 24, Chapter 44 of the **Delaware Code**; and

5.2.3 The Board's Rules and Regulations, 24 **Del. Admin. Code** Section 4400.

5.3 Applicants who fail two consecutive times must wait one year before retesting.

## **6.0 Lapse and Renewal of Licenses and Certificates**

6.1 The biennial licenses and certificates granted by the Board shall lapse on September 30th of each even numbered year beginning in 2008, 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 or certificate holder of the expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. License and certificate renewal may be accomplished online at the Division of Professional Regulation's website.

6.2 Each applicant for renewal must retain proof of completing the continuing education requirements. Extra continuing education hours do not carry over to the next licensing or certification period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

6.3 A license or certificate is lapsed when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee or certificate holder may activate a lapsed license or certificate within one year of the date the renewal application was due by meeting all renewal requirements and paying an additional fee set by the Division of Professional Regulation.

6.4 An individual whose license or certificate has lapsed for more than one year must reapply as a new applicant. The applicant must take the examination required by §4416(b)(3) and achieve a passing score unless he or she previously passed an approved licensure test that covered the applicable law and standards in effect at the time of the new application.

## **7.0 Inactive License or Certificate: Expiration: Reactivation**

7.1 A licensee or certificate holder with a valid license may request in writing to be placed on inactive status. Inactive status can be effective for up to two years.

7.2 Each inactive license and certificate shall expire at the end of the biennial licensing and certificate period applicable to active licensees, which is September 30 of even-numbered years beginning in 2008. An inactive license or certificate may be renewed for two years by application to the Division upon proof of 10 hours of continuing education in the past two years.

7.3 An inactive license may be reactivated by the Board upon written request on a form designated by the Board, proof of insurance and bond, proof that the licensee has completed the requisite continuing education, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.4 An inactive certificate may be reactivated by the Board upon written request on a form designated by the Board, proof of completion of the requisite continuing education, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee or certificate holder is not authorized to work as a licensed manufactured home installer or certified manufactured home installation inspector, respectively, in this State during the period of inactive status.

### **8.0 Continuing Education ("CE")**

8.1 Licensees and certificate holders shall complete 10 hours of approved CE by September 30 of each biennial renewal period.

8.1.1 This requirement is prorated for license or certificate holders during their initial licensing period as follows:

8.1.1.1 A person licensed less than one year does not need to complete CE at the first renewal.

8.1.1.2 A person licensed one year but less than two years must submit 5 CE hours at the first renewal.

8.1.2 An "hour" for purposes of continuing education credit shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

8.2 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

8.3 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation.

8.3.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to the installation of manufactured housing.

8.3.2 Course providers, licensees and certificate holders may request Board approval of courses at any time by submitting a written request to the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor.

8.3.3 Course providers, licensees and certificate holders seeking pre-approval should submit the request a sufficient amount of time in advance of the CE course to permit the Board to consider the request at a regularly-scheduled Board meeting.

8.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.

8.4.1 Attestation may be completed electronically if the renewal is accomplished online. Alternatively, licensees and certificate holders may submit the attestation in paper form on forms approved by the Board.

8.4.2 Licensees and certificate holders selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.

8.4.3 Approval of CE automatically expires on September 30, 2008 and every two years thereafter on each September 30. A sponsor must reapply for approval as provided in Rule 8.3.

8.5 Random audits will be performed by the Board to ensure compliance with the license and certificate requirements. Licensees and certificate holders selected for the random audit shall submit verification that they maintain the required bond and liability insurance, verification of required employment status, and the completion of the required CE, as applicable and any other information required by the Board to confirm their continued eligibility for the license or certificate.

8.5.1 In a renewal year, the Board will notify licensees and certificate holders within sixty (60) days after September 30 that they have been selected for audit.

8.5.2 Licensees selected for random audit are required to submit verification within ten (10) days of receipt of notification of selection for audit.

## **9.0 Manufactured Home Installation Requirements**

9.1 Manufactured homes shall be installed in accord with Section 4421(b).

9.2 Footers. Manufactured homes installed in this State shall be installed on piles or concrete footers. Concrete footers shall consist of a minimum of 3000 psi concrete and shall be a minimum of 24 inches in diameter, at least eight (8) inches thick and set two (2) feet deep from final grade where soil conditions permit. Where the regulations of the Department of Housing and Urban Development, the manufacturer's installation instructions or manual, NCSB/ANSI code or the set of plans designed for the specific manufactured home under the seal of a registered professional engineer, as applicable under Section 4421(b), require more stringent standards, those standards shall apply.

9.3 Anchoring. Manufactured homes installed in the State shall be anchored. Anchors shall be installed in accord with the regulations of the Department of Housing and Urban Development, the manufacturer's installation instructions or manual, NCSB/ANSI code or the set of plans designed for the specific manufactured home under the seal of a registered professional engineer, as applicable under Section 4421(b).

## **10.0 Inspection**

10.1 Of the maximum five (5) inspections required by Section 4422(a):

10.1.1 One inspection shall be performed once the ground is prepared for the concrete to be poured.

10.1.2 One inspection shall be performed upon completion of the installation in accord with Section 4422(a).

## **11.0 Decals**

11.1 A decal represents the installer's certification that the installation was completed in compliance with the manufacturer's installation manual and all applicable law.

11.2 Licensees shall purchase Board approved decals from the Board for a fee to be established by the Division.

11.2.1 Decals may only be purchased by licensees in good standing.

11.2.2 Decals shall be numbered in sequence and affixed by the licensed installer to the manufactured home in accord with Section 11.4 below.

11.3 The licensed installer shall clearly inscribe the installation completion date, the name of the installer, and the installer's license number in blue or black ink on the decal.

11.4 The decal shall be permanently affixed in plain view next to the manufactured home data plate. In the absence of a data plate, the decal shall be permanently affixed in the interior breaker panel box.

11.5 Licensees shall record the decal number, installation completion date, location of manufactured home, and the name of owner in a log maintained by the licensee on a continuous basis.

## **12.0 Use of Designations**

12.1 A licensee shall prominently display the words "Licensed Manufactured Home Installer" and his license number on the exterior of all vehicles used for work in not less than three inch letters and numbers.

12.2 Only an individual who is registered with the Board and holds a license as a manufactured home installer may use the designation "Licensed Manufactured Home Installer" and other designations which suggest that the user is a licensed manufactured home installer.

12.3 No individual, sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/itself or otherwise use the title or designation "licensed manufactured home installer or any other title, designation, or abbreviation of any titles or designations likely to be confused with "licensed manufactured home installer".

## **13.0 Organization of the Board**

13.1 Election of Officers. Beginning in 2007, the Board shall elect officers to serve for a one year term from April 1-March 31. Elections shall be held annually and shall occur no earlier than 3 months prior to April 1.

13.2 Duties of the Officers

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting

meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 Del.C. §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

#### **14.0 Discipline: Unlicensed Practice: Board Appointment of Licensed Installer or Certified Inspector**

14.1 If the Board requires a certified inspector to inspect work completed by an unauthorized practitioner pursuant to Section 4416(b)(13), the Board will choose a certified inspector employed by the authorized inspection agency in whose jurisdiction the manufactured home is situated. If the Board requires a licensed installer to take over the work done by an unauthorized practitioner pursuant to Section 4416(b)(13), the Board will choose the licensed installer from among those licensed installers who have volunteered to perform such work, whose license is in good standing and not subject to probation, other discipline or a pending complaint, and whose business address in the jurisdiction of the same authorized inspection agency as the subject property and closest in proximity to the subject property. If there are no volunteers who qualify, then the Board shall select a licensee at random. A licensee selected at random may be excused from the performance of this duty if he presents evidence that it will cause a hardship.

14.2 If the Board requires a certified inspector to inspect work completed by an unauthorized practitioner pursuant to Section 4416(b)(13), the Board will choose a certified inspector employed by the authorized inspection agency in whose jurisdiction the manufactured home is situated.

#### **15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

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

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

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

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

15.5 Failure to cooperate fully with the participating Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board president or that

president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 15.8 of this section.

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

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

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

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

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

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

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

15.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

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

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

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

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

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

## **16.0 Crimes Substantially Related to the Practice of Manufactured Home Installation or Installation Inspection**

16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of

# PROPOSED REGULATIONS

manufactured home installation or manufactured home installation inspection in the State of Delaware, without regard to the place of conviction:

- 16.1.1 Reckless endangering in the first degree. 11 Del.C. §604
- 16.1.2 Assault in the first degree. 11 Del.C. §613
- 16.1.3 Criminally negligent homicide. 11 Del.C. §631
- 16.1.4 Manslaughter. 11 Del.C. §632
- 16.1.5 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 16.1.6 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 16.1.7 Murder in the second degree. 11 Del.C. §635
- 16.1.8 Murder in the first degree. 11 Del.C. §636
- 16.1.9 Unlawful sexual contact in the second degree. 11 Del.C. §768
- 16.1.10 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 16.1.11 Rape in the fourth degree. 11 Del.C. §770
- 16.1.12 Rape in the third degree. 11 Del.C. §771
- 16.1.13 Rape in the second degree. 11 Del.C. §772
- 16.1.14 Rape in the first degree. 11 Del.C. §773
- 16.1.15 Sexual extortion. 11 Del.C. §776
- 16.1.16 Continuous sexual abuse of a child. 11 Del.C. §778
- 16.1.17 Kidnapping in the second degree. 11 Del.C. §783
- 16.1.18 Kidnapping in the first degree. 11 Del.C. §783A
- 16.1.19 Arson in the third degree. 11 Del.C. §801
- 16.1.20 Arson in the second degree. 11 Del.C. §802
- 16.1.21 Arson in the first degree. 11 Del.C. §803
- 16.1.22 Criminal mischief. 11 Del.C. §811
- 16.1.23 Burglary in the third degree. 11 Del.C. §824
- 16.1.24 Burglary in the second degree. 11 Del.C. §825
- 16.1.25 Burglary in the first degree. 11 Del.C. §826
- 16.1.26 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828
- 16.1.27 Robbery in the second degree. 11 Del.C. §831
- 16.1.28 Robbery in the first degree. 11 Del.C. §832
- 16.1.29 Carjacking in the second degree. 11 Del.C. §835
- 16.1.30 Carjacking in the first degree. 11 Del.C. §836
- 16.1.31 Theft. 11 Del.C. §841
- 16.1.32 Theft of motor vehicle. 11 Del.C. §841A
- 16.1.33 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842
- 16.1.34 Theft; false pretense. 11 Del.C. §843
- 16.1.35 Theft; false promise. 11 Del.C. §844
- 16.1.36 Theft of services. 11 Del.C. §845
- 16.1.37 Extortion. 11 Del.C. §846
- 16.1.38 Theft of rented property. 11 Del.C. §849
- 16.1.39 Receiving stolen property. 11 Del.C. §851
- 16.1.40 Identity theft. 11 Del.C. §854
- 16.1.41 Forgery. 11 Del.C. §861
- 16.1.42 Possession of forgery devices. 11 Del.C. §862
- 16.1.43 Forgery and related offenses. 11 Del.C. §863
- 16.1.44 Falsifying business records. 11 Del.C. §871
- 16.1.45 Tampering with public records in the second degree. 11 Del.C. §873
- 16.1.46 Tampering with public records in the first degree. 11 Del.C. §876
- 16.1.47 Offering a false instrument for filing. 11 Del.C. §877
- 16.1.48 Issuing a false certificate. 11 Del.C. §878
- 16.1.49 Bribery. 11 Del.C. §881
- 16.1.50 Bribe receiving. 11 Del.C. §882
- 16.1.51 Deceptive business practices. 11 Del.C. §906
- 16.1.52 Criminal impersonation. 11 Del.C. §907

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| <u>16.1.53</u>  | <u>Criminal impersonation of a police officer. 11 Del.C. §907B</u>                      |
| <u>16.1.54</u>  | <u>Securing execution of documents by deception. 11 Del.C. §909</u>                     |
| <u>16.1.55</u>  | <u>Insurance fraud. 11 Del.C. §913</u>  |
| <u>16.1.56</u>  | <u>Home improvement fraud. 11 Del.C. §916</u>   |
| <u>16.1.57</u>  | <u>New home construction fraud. 11 Del.C. §917</u>                                      |
| <u>16.1.58</u>  | <u>Dealing in children. 11 Del.C. §1100</u>   |
| <u>16.1.59</u>  | <u>Sexual exploitation of a child. 11 Del.C. §1108</u>                                  |
| <u>16.1.60</u>  | <u>Unlawfully dealing in child pornography. 11 Del.C. §1109</u>                         |
| <u>16.1.61</u>  | <u>Possession of child pornography. 11 Del.C. §1111</u>                                 |
| <u>16.1.62</u>  | <u>Sexual offenders; prohibitions from school zones. 11 Del.C. §1112</u>                |
| <u>16.1.63</u>  | <u>Sexual solicitation of a child. 11 Del.C. §1112A</u>                                 |
| <u>16.1.64</u>  | <u>Bribery. 11 Del.C. §1201</u>   |
| <u>16.1.65</u>  | <u>Receiving a Bribe. 11 Del.C. §1203</u>   |
| <u>16.1.66</u>  | <u>Giving unlawful gratuities. 11 Del.C. §1205</u>                                      |
| <u>16.1.67</u>  | <u>Receiving unlawful gratuities. 11 Del.C. §1206</u>                                   |
| <u>16.1.68</u>  | <u>Improper influence. 11 Del.C. §1207</u>  |
| <u>16.1.69</u>  | <u>Official misconduct. 11 Del.C. §1211</u>   |
| <u>16.1.70</u>  | <u>Profiteering. 11 Del.C. §1212</u>  |
| <u>16.1.71</u>  | <u>Perjury in the third degree. 11 Del.C. §1221</u>                                     |
| <u>16.1.72</u>  | <u>Perjury in the second degree. 11 Del.C. §1222</u>                                    |
| <u>16.1.73</u>  | <u>Perjury in the first degree. 11 Del.C. §1223</u>                                     |
| <u>16.1.74</u>  | <u>Making a false written statement. 11 Del.C. §1233</u>                                |
| <u>16.1.75</u>  | <u>Terroristic threatening of public officials or public servants. 11 Del.C. §1240</u>  |
| <u>16.1.76</u>  | <u>Bribing a witness. 11 Del.C. §1261</u>   |
| <u>16.1.77</u>  | <u>Bribe receiving by a witness. 11 Del.C. §1262</u>                                    |
| <u>16.1.78</u>  | <u>Tampering with a witness. 11 Del.C. §1263</u>  |
| <u>16.1.79</u>  | <u>Interfering with a child witness. 11 Del.C. §1263A</u>                               |
| <u>16.1.80</u>  | <u>Bribing a juror. 11 Del.C. §1264</u>   |
| <u>16.1.81</u>  | <u>Bribe receiving by a juror. 11 Del.C. §1265</u>                                      |
| <u>16.1.82</u>  | <u>Tampering with a juror. 11 Del.C. §1266</u>  |
| <u>16.1.83</u>  | <u>Misconduct by a juror. 11 Del.C. §1267</u>   |
| <u>16.1.84</u>  | <u>Tampering with physical evidence. 11 Del.C. §1269</u>                                |
| <u>16.1.85</u>  | <u>Hate crimes. 11 Del.C. §1304</u>   |
| <u>16.1.86</u>  | <u>Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C.</u>    |
| <u>§1338</u>    |   |
| <u>16.1.87</u>  | <u>Carrying a concealed deadly weapon. 11 Del.C. §1442</u>                              |
| <u>16.1.88</u>  | <u>Carrying a concealed dangerous instrument. 11 Del.C. §1443</u>                       |
| <u>16.1.89</u>  | <u>Possessing a destructive weapon. 11 Del.C. §1444</u>                                 |
| <u>16.1.90</u>  | <u>Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445</u>                      |
| <u>16.1.91</u>  | <u>Unlawfully dealing with a switchblade knife. 11 Del.C. §1446</u>                     |
| <u>16.1.92</u>  | <u>Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447</u>     |
| <u>16.1.93</u>  | <u>Possession of a firearm during the commission of a felony. 11 Del.C. §1447A</u>      |
| <u>16.1.94</u>  | <u>Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448</u> |
| <u>16.1.95</u>  | <u>Receiving a stolen firearm. 11 Del.C. §1450</u>                                      |
| <u>16.1.96</u>  | <u>Theft of a firearm. 11 Del.C. §1451</u>  |
| <u>16.1.97</u>  | <u>Unlawfully dealing with knuckles-combination knife. 11 Del.C. §1452</u>              |
| <u>16.1.98</u>  | <u>Unlawfully dealing with martial arts throwing star. 11 Del.C. §1453</u>              |
| <u>16.1.99</u>  | <u>Giving a firearm to person prohibited. 11 Del.C. §1454</u>                           |
| <u>16.1.100</u> | <u>Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455</u>         |
| <u>16.1.101</u> | <u>Unlawfully permitting a minor access to a firearm. 11 Del.C. §1456</u>               |
| <u>16.1.102</u> | <u>Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457</u>     |
| <u>16.1.103</u> | <u>Removing a firearm from the possession of a law enforcement officer. 11 Del.C.</u>   |

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- 16.1.104 Possession of a weapon with a removed, obliterated or altered serial number. 11 Del.C. §1459
- 16.1.105 Criminal Penalties, Organized Crime and Racketeering. 11 Del.C. §1504
- 16.1.106 Act of intimidation. 11 Del.C. §3532
- 16.1.107 Aggravated act of intimidation. 11 Del.C. §3533
- 16.1.108 Prohibited Acts A; penalties. 16 Del.C. §4751
- 16.1.109 Prohibited Acts B; penalties. 16 Del.C. §4752
- 16.1.110 Unlawful delivery of noncontrolled substance. 16 Del.C. §4752A
- 16.1.111 Prohibited Acts C; penalties. 16 Del.C. §4753
- 16.1.112 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 Del.C. §4753A
- 16.1.113 Prohibited acts D; penalties. 16 Del.C. §4754
- 16.1.114 Possession and delivery of noncontrolled prescription drug. 16 Del.C. §4754A
- 16.1.115 Prohibited acts; penalties. 16 Del.C. §4756
- 16.1.116 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties. 16 Del.C. §4757
- 16.1.117 Distribution to persons under 21 years of age; penalties. 16 Del.C. §4761
- 16.1.118 Purchase of drugs from minors; penalties. 16 Del.C. §4761A
- 16.1.119 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. §4767
- 16.1.120 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 Del.C. §4768
- 16.1.121 Drug paraphernalia. 16 Del.C. §4771(a) and (b)
- 16.1.122 Penalties [drug paraphernalia]. 16 Del.C. §4774
- 16.1.123 Attempt to evade or defeat tax. 30 Del.C. §571
- 16.1.124 Failure to collect or pay over tax. 30 Del.C. §572
- 16.1.125 Failure to file return, supply information or pay tax. 30 Del.C. §573
- 16.1.126 Fraud and false statements. 30 Del.C. §574
- 16.1.127 Obtaining benefit under false representation. 31 Del.C. §1003
- 16.1.128 Reports, statements or documents. 31 Del.C. §1004(1)-(4)
- 16.1.129 Unlawful possession or manufacture of proof of insurance. 21 Del.C. §2118A
- 16.1.130 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 Del.C. §2316
- 16.1.131 Unlawful application for or use of license or identification. 21 Del.C. §2751
- 16.1.132 False statements. 21 Del.C. §2752
- 16.1.133 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty. 21 Del.C. §6705(a)-(e)
- 16.1.134 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 Del.C. §6708(a) and (b).
- 16.1.135 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty. 21 Del.C. §6709(a)
- 16.1.136 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty. 21 Del.C. §6710(a)
- 16.1.137 Permits Required [regarding environmental control]. 7 Del.C. §6003
- 16.1.138 Criminal Penalties [for violation of §6003 or Regulations]. 7 Del.C. §6013
- 16.2 Crimes substantially related to the practice of manufactured home installation or manufactured home installation inspection shall be deemed to include any crimes under any federal law, state law or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**Symbol Key**

Arial 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.

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**COUNCIL ON POLICE TRAINING**

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (11 **Del.C.**, §8404(a)(5))

**REGULATORY IMPLEMENTING ORDER****Council on Police Training****I. Summary of the Evidence and Information Submitted.**

The Chairman of the Council on Police Training approves the proposed regulations as published in the *Delaware Register of Regulations* on June 1, 2006. Notices of the proposed regulation were published in the *Delaware State News* and *The News Journal* on May 27 and 30, 2006, respectively, in the forms attached hereto as Exhibits A and B. The notices invited written comments (none were received). The notices also invited the public to attend a hearing on June 22, 2006 to comment on the proposed regulation. No members of the public attended the hearing.

**II. Findings of Facts.**

The Chairman finds that it is necessary to adopt the regulations to promote public safety.

**III. Decision to Adopt the Regulation.**

For the foregoing reasons, the Chairman concludes that it is necessary to adopt the regulations. Therefore, pursuant to 11 **Delaware Code** §8404(a)(14), the regulations attached hereto as Exhibit C are hereby adopted.

**IV. Text and Citation.**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit C, and said regulation shall be cited as the *Regulations of the Council on Police Training*.

## V. Effective Date of Order.

The action referred to above was taken on June 22, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED**, this 22<sup>nd</sup> day of June, 2006.  
Richard Carmean, Chairman  
Council on Police Training

\* Please note that no changes were made to the regulation as originally proposed and published in the June 2006 issue of the *Register* at page 1804 (9 DE Reg. 1804). Therefore, the final regulation is not being republished. Please refer to the June 2006 issue of the *Register* or contact the Council on Police Training.

A complete set of the rules and regulations for the Council on Police Training are available at:  
<http://www.state.de.us/dsp/academy.htm>

## DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6603 (16 Del.C. §6603)

### ORDER

#### 2006 Delaware State Fire Prevention Regulations

The Delaware State Fire Prevention Commission ("the Commission") held a properly noticed public hearing on June 20, 2006, to receive comment on proposed additions, revisions, deletions, modifications and reservations to Commission Regulations. (Attached to this Order as "Exhibit A"). The attendance sheets and transcriber minutes of this hearing are attached to this Order as "Exhibit B" in lieu of a statement of summary of the evidence. Similarly, those written comments received by the Commission and introduced into evidence at the hearing of the State Fire Marshal and other speakers are attached to this Order as "Exhibit C".

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

1. There was no public comment received concerning the following proposed regulations:
 

|                     |   |
|---------------------|---|
| Part I, Annex A     |   |
| Part I, Annex C     |   |
| Part I, Chapter 2   | Definitions   |
| Part I, Chapter 5   | Listing-Approval and Accreditation  |
| Part II, Chapter 2  | Fire Barriers   |
| Part II, Chapter 3  | Special Fire Safety Provisions for Physically Handicapped People          |
| Part II, Chapter 4  | Automatic Sprinkler Systems   |
| Part II, Chapter 5  | High Rise and Large Area Building   |
| Part II, Chapter 6  | Standard for Fire Flow for Fire Protection                                |
| Part II, Chapter 7  | Minimum Requirements for Water Suppliers                                  |
| Part III, Chapter 4 | Licensing Regulations for Fire Alarm Signaling System                     |
| Part III, Chapter 5 | Licensing Regulations for Fire Suppression Systems                        |
| Part III, Chapter 6 | Licensing Regulations for Fire Alarm Signaling System In-House Licensee's |
| Part III, Chapter 7 | Licensing Regulations for Fire Suppression System In-House Licensee's     |
| Part V, Chapter 1   | General Fire Safety Requirements  |
| Part VI, Chapter 1  | Intermediate Care Facilities for the Mentally Retarded                    |
| Part VI, Chapter 3  | Apartment Buildings/Multi-Family Dwellings                                |
| Part VI, Chapter 7  | Haunted Houses  |
| Appendix D          |   |

2. The Commission heard testimony concerning the provision of NFPA 70, the National Electric Code, Article 210.12 and Article 550.25(B)(Annex B) regarding arc-fault circuit interrupting protection. The Commission notes the testimony of the State Fire Marshal's Office that the proposed regulations do not amend the Regulations adopted in 2003 other than to confirm the language of the Delaware Regulations to the 2005 edition of NFPA 70.

#### **THE LAW**

The State Fire Prevention Commission's rulemaking authority is provided by 19 **Del.C.** §6603 that states:

#### **§6603. State Fire Prevention Commission - Promulgation of regulations.**

The State Fire Prevention Commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion. Such regulations, amendments or repealers shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for the fire prevention and fire protection and shall have the force and effect of law in the several counties, cities and political subdivision of the State.

#### **DECISION**

The Commission hereby adopts the Regulations as proposed with the alterations and clarifications noted in this Order and a copy of the Regulations as adopted is attached to this Order. The Commission relies upon its expertise in this area and the evidence presented in the testimony and documents submitted especially the submission on behalf of the State Marshal and witnesses in support of the changes.

**It is so Ordered this 18th day of July, 2006.**

#### **STATE FIRE PREVENTION COMMISSION**

Kenneth H. McMahon, Chairman  
Marvin Sharp  
Bob Ricker

W. (Bill) Betts, Jr., Vice Chairman  
Frances J. Dougherty  
Raymond Stevens

**\*Please note that the following text is the only change from that which was proposed in the May Register. To view the proposed amendments in their entirety, please refer to page 1623 of the May issue (9 DE Reg. 1623).**

*(Break in Continuity of Sections)*

#### **PART – I ; Annex B**

*(Break in Continuity of Sections)*

#### **MODIFY NFPA 13, 2002. Standard for the Installation of Sprinkler Systems.**

##### **8-14 Special Situations**

##### **AMEND ~~§18-[1]4.7~~ by adding ~~§18-[1]4.7.1.1~~ as follows:**

**~~18-[1]4.7.1.1~~ Sprinklers shall be required on porches, balconies, corridors, and stairs regardless of whether or not they are open to outside air.**

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# FINAL REGULATIONS

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 Del.C. §122(b)(6))  
14 DE Admin. Code 502

### REGULATORY IMPLEMENTATION ORDER

#### 502 Alignment of Local School District Curricula to the State Content Standards

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to adopt 14 DE Admin. Code 502 Alignment of the Local School District Curricula to the State Content Standards in order to fulfill the requirements of 14 Del.C. §122(b)(6) concerning the development of a recommended statewide uniform curricula for all public schools in the State. An additional statement was added in 5.3 to emphasize that the Department will be monitoring the Curriculum Alignment process and products.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on May 24, 2006, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The Councils suggested that it may be a good idea to include parent and student organizations in the district decision making concerning alignment of the curriculum. The Department recognizes that curriculum analysis is a technical process but school districts may certainly choose to involve such organizations in the alignment process. The Councils also expressed concern that the documentation of curriculum alignment and effectiveness could be strengthened for students with disabilities. The analysis of disaggregated groups as required by No Child Left Behind includes children with disabilities and the Department will assure that data for children with disabilities is collected and analyzed by the districts.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 502 in order to fulfill the requirements of 14 Del.C. §122(b) (6) concerning the development of a recommended statewide uniform curricula for all public schools in the State.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 DE Admin. Code 502. Therefore, pursuant to 14 Del.C. §122 (b) (6), 14 DE Admin. Code 502 attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 502 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

##### IV. Text and Citation

The text of 14 DE Admin. Code 502 adopted hereby shall be in the form attached hereto as *Exhibit "B"* and said regulation shall be cited as 14 DE Admin. Code 502 in the *Administrative Code of Regulations* for the Department of Education.

##### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on July 5, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 5th day of July 2006.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**502 Alignment of Local School District Curricula to the State Content Standards****1.0 Purpose**

The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

**2.0 Definitions**

**“Alignment Index”** means a correlational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.

**“Content Map”** means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

**[“Department” means the Delaware Department of Education.]**

**“Grade Level Expectations”** means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.

**“Scope and Sequence”** means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.

**“Statewide Recommended Curriculum Frameworks”** means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.

**“Survey of Enacted Curriculum (SEC)”** means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.

**“Tile Chart”** means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

**“Unit Summative Assessment”** means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.

**3.0 Alignment Requirement**

All school districts shall provide evidence to the Department **[of Education]** that their school district curricula are aligned with the State Content Standards. As of 2006 State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, and the Family and Consumer Sciences. Content standards as developed by the Department in the future shall also be included under this section

**4.0 Use of the Statewide Recommended Curricula Frameworks**

School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.

**5.0 Documentation of Curriculum Alignment**

5.1 Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department **[of Education]** no later than twelve (12) months following the official release by the Department **[of Education]** of the

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Statewide Recommended Curriculum Frameworks in each content area.

5.2 Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department [of Education].

5.3 **Evidence of curriculum alignment submitted by school districts shall be subject to Department review during on site monitoring visits.]**

### **6.0 Criteria for the Evaluation of the Alignment**

6.1 School districts shall be required to submit evidence of local curriculum alignment for each grade cluster (K-5, 6-8 and 9-12) from at least two of the permissible categories of evidence in 6.1.1 through 6.1.6. One of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.6. The school district may choose to vary the choice of the second category of evidence by grade cluster level. Evidence of alignment to each standard in a given content area shall be submitted.

6.1.1 Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.

6.1.2 Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K-5, 6-8 and 9-12) of the Survey of Enacted Curriculum for the content area under consideration. The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.

6.1.3 Category 3 is one unit of study from each marking period with a corresponding Unit Summative Assessment, showing the academic standards addressed. Evidence shall be from grades 3, 5, 8 and 10.

6.1.4 Category 4 is a description of the Scope and Sequence with a matrix of the primary academic standards addressed for each grade cluster.

6.1.5 Category 5 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The contractor's credentials shall be submitted.

6.1.6 Category 6 is a grade cluster Scope and Sequence with a sample unit from each grade cluster, combined with student assessment results. Evidence of alignment of formative student progress to the State Content Standards shall be required. For districts using commercial student progress assessments, evidence shall include evidence of alignment of student progress assessments to the Delaware content standards.

6.2 Required documentation for specific student subpopulations

6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

### **7.0 Participation of Building Level Staff**

All school districts shall describe and document to the Department [of Education] the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.

### **8.0 Subsequent Review of Alignment**

Each district shall resubmit evidence of alignment with the State Content Standards on forms developed and required by the Department [of Education] between three and five years from the initial approval and on a recurring cycle of three to five years as determined by the Department [of Education]. Further provided, the district shall be required to present evidence of curriculum alignment if there are major changes to the approved curricula.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### 50100 Services Provided by Chronic Renal Disease Program

#### NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) to provide a standard pharmacy benefit to Chronic Renal Disease Program recipients. 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 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED CHANGES

##### Statutory Authority

**Delaware Code**, Title 29, Chapter 79, Subchapter II, Sections 7932 – 7935, *The Chronic Renal Diseases Program*

##### Background

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be considered before CRDP funds are utilized.

##### Purpose of the Proposed Regulation

The purpose of the proposed regulation is to provide a standard pharmacy benefit to Chronic Renal Disease Program (CRDP) recipients. Pharmaceutical charges have been offset with the implementation of Federal Medicare Part D benefits; thereby permitting the inclusion of all non-Part D covered medications as a standard benefit available to all qualified recipients.

##### Summary of Proposed Changes

The cost shift of medications to Medicare Part D has permitted the standardization of the pharmacy benefit to CRDP clients. The proposed changes removes the additional steps previously necessary to obtain individual authorizations for each medication required.

The anticipated benefit of expanding pharmacy access is improved health outcomes for CRDP recipients, thereby avoiding costs associated with the more serious health care issues that could occur from lack of access to medications.

The proposal amends DSSM 50100.1, Medications and 50100.2, Nutritional Supplements as follows:

- 1) As participation in Medicare Part D or proof of creditable coverage became a condition of CRDP eligibility, the CRDP program no longer provides primary pharmacy benefit coverage for many medications.
- 2) Prescription drugs will be reimbursed in accordance with current Delaware Medicaid and Medical Assistance formulary limitations and procedures.
- 3) Reimbursement for medications will be made only for clients currently eligible and approved for participation in CRDP.

- 4) Refills may be authorized in compliance with appropriate pharmacy laws, and subject to Delaware Medicaid and Medical Assistance formulary restrictions.
- 5) At the point of sale, the pharmacist will determine electronically if another funding source is available, and bill that vendor(s) first, and then will determine if CRDP will fund the requested product.
- 6) At the point of sale, the pharmacist will be alerted if program quantity limits for nutritional supplements have been exceeded and if prior authorization is needed by EDS.
- 7) Approval of funding nutritional supplements is subject to Division of Medicaid and Medical Assistance formulary restrictions.
- 8) The CRDP will fund oral nutritional supplements for a period prescribed by the physician.

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exception Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following similar observations and recommendations summarized below.

DMMA has considered each comment and responds as follows:

First, the Councils have not embraced and oppose the use of a DMMA formulary in similar contexts. Due to the uniqueness of each patient and the complexity of treating mental illness and other illnesses, it is imperative that patients have access to the widest range of pharmaceutical treatments. Patient disease characteristics and clinical efficacy should be the primary factors considered by providers when selecting pharmaceutical agents to treat these illnesses. Furthermore, a one-size-fits-all approach to drugs for such conditions is unworkable since clinical effectiveness and individual tolerances vary considerably, these conditions are complex, and person with these conditions are vulnerable. We would like to reiterate its preference that physicians not be constrained in their selection of medically appropriate drugs.

**Agency Response:** All pharmacy programs, including federally funded programs, utilize a formulary to maintain cost neutrality. Additionally, since CRDP is a secondary payer, it is unlikely DMMA formulary restrictions will have any impact; since CRDP is supplementing payments made by the primary payer, and does not generally override the primary payer formulary. If a client requires a non-formulary prescription, there is an avenue to request an exemption.

Second, the 6-month durational cap on funding nutritional supplements has been deleted. Councils endorse this deletion.

**Agency Response:** DMMA appreciates the endorsement. This, in fact, relaxes earlier program requirements by requiring prior authorizations for supplements exceeding a dollar limit instead of requiring an authorization for all requests. Only if program quantity limits for nutritional supplements are exceeded, a prior authorization will be required. Once approved, the medical necessity of the nutritional supplement must be substantiated every 6 months if the quantity limit is exceeded. This will insure client usage and will require provider monitoring of client's needs on a routine basis.

Third, proposed Section 50100.1 recites that "participation in Medicare Part D or proof of creditable coverage became a condition of CRDP eligibility". No Federal or State law requires Medicare beneficiaries to enroll in Medicare Part D. Moreover, the current CRDP do not *require* Medicare beneficiaries to enroll in Medicare-D or have "creditable coverage". The regulations allow DSS to "consider" third party resources but enrollment in Medicare-D is not currently an absolute requirement for eligibility in the CRDP. By analogy, many CRDP beneficiaries may be "eligible" to purchase individual health insurance policies (at considerable cost). However, they are not required to do so as a condition of eligibility for the CRDP. DSS may wish to consider amending the incorrect recital in §50100.1.

**Agency Response:** Eligible applicants must enroll in Medicare Part D, unless they have creditable coverage, as a condition of eligibility for CRDP. Section 50500 Technical Eligibility states, "An individual who is entitled to receive Medicare benefits under Part A or Part B must enroll in Part D in order to be eligible for CRDP. The individual must provide proof of Medicare Part D enrollment. Exception: Medicare eligible individuals who have creditable coverage are not required to enroll in Part D as a condition of eligibility."

Client cost incurred for Medicare Part D premiums have been and will continue to be covered by CRDP. Section 50100 Services Provided by CRDP states, "Services provided by the CRDP can consist of payment for medications, nutritional supplements, transportation, and payment of Medicare Part D costs." Therefore this requirement should not be burdensome to the client.

Fourth, the third and fourth bullets in §50100.2 should be deleted. They are variations of portions of the existing DSS "medical necessity" regulation published at 9 **DE Reg.** 1249 (January 1, 1999). By reproducing an incomplete variation of medical necessity standards, the bullets "muddy the waters". Moreover, the second bullet already requires completion of "a Medical Necessity Form" which makes the third and fourth bullets unnecessary.

**Agency Response:** These bullets are not the subject of the proposed regulation. However, DMMA has determined no ambiguity. The third and fourth bullets in section 50100.2 remain valid.

No changes were made to the final regulation as a result of these comments.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the June 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) to provide a standard pharmacy benefit to Chronic Renal Disease Program recipients is adopted and shall be final effective August 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 7/14/06

#### **DMMA FINAL ORDER REGULATION #06-30 REVISIONS:**

##### **50100.1 Medications**

~~The CRDP has the ability to fund prescription medications, over-the-counter medications (OTC's) or both. Prescription drugs covered under CRDP are restricted to products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. As participation in Medicare Part D or proof of creditable coverage became a condition of CRDP eligibility, the CRDP program no longer provides primary pharmacy benefit coverage for many medications. As such, to improve access to prescription and OTC medications, benefits may be offered to all CRDP eligible clients, regardless of individual need review.~~

~~Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration, as well as, cost effective over-the counter drugs prescribed by a licensed practitioner. Prescription drugs will be reimbursed in accordance with current Division of Medicaid and Medical Assistance formulary limitations and procedures.~~

~~Reimbursement for medications will be made only for clients authorized by the clients currently eligible and approved for participation in CRDP. All third party resources must be used before CDRP funds are utilized. Client's eligibility for the medication benefit is based upon the outcome of their medical and financial assessment.~~

~~Prescription medications potentially will be funded as described above if prescribed by a physician or licensed practitioner for eligible CRDP clients. Refills may be authorized in compliance with appropriate pharmacy laws, and are subject to Division of Medicaid and Medical Assistance (DMMA) formulary restrictions. Reimbursements for OTC products for eligible clients are those, which the physician/practitioner has provided written a legal prescription or verbal authorization to the pharmacist. These products must be for the client's personal use only. There will be no reimbursement for OTC products that are not prescribed by a physician/practitioner. Supplies such as mouthwash, toothpaste, shampoo, etc. will not be reimbursed. OTCs are covered based on the DMMA policy with an exception for nutritional supplements (for additional information, refer to "DSSM 50100.2 Nutritional Supplements").~~

~~At the point of sale, the pharmacist will determine electronically if CRDP another funding source is available, and bill that vendor(s) first, and then will determine if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must have be a participating Delaware Medicaid provider, with a valid provider~~

identification number.

Note: ~~All third party resources must be used before CRDP funds are utilized.~~

**9 DE Reg. 774 (11/01/05)**

***(Break in Continuity of Sections)***

**50100.2 Nutritional Supplements**

Reimbursement for nutritional supplements will be made only for clients currently eligible and approved for participation in CRDP. All third party resources must be used before CRDP funds are utilized.

Nutritional supplements will be funded as described above if prescribed by a physician or licensed practitioner for eligible CRDP clients. Refills may be authorized in compliance with appropriate pharmacy laws and are subject to Division of Medicaid and Medical Assistance (DMMA) formulary restrictions. Reimbursements for nutritional supplements for eligible clients are those, which the physician/practitioner has provided a legal prescription to the pharmacist.

At the point of sale, the pharmacist will determine electronically if another funding source is available, and bill that vendor(s) first, and then will determine if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must be a participating Delaware Medicaid provider, with a valid provider identification number.

At the point of sale, the pharmacist will be alerted if program quantity limits for nutritional supplements have been exceeded and if prior authorization is needed by EDS.

Prior authorization criteria for eligible clients:

Nutritional supplements will only be funded by the CRDP if the ~~The~~ client is must be diagnosed with ESRD, is on dialysis or has received a kidney transplant, and, exhibits signs and symptoms of malnutrition as determined by documentation of specific laboratory values. Additionally, approval of funding the only nutritional supplements is subject to Division of Medicaid and Medical Assistance formulary restrictions. ~~funded by the CRDP are those currently on the formulary as dictated by First Data Bank.~~

Other criteria that must be met include:

- it is reasonable and necessary part of the client's treatment plan;
- ordered by a physician or certified nurse practitioner as indicated by completion of a Medical Necessity Form;
- not furnished for the convenience of the client, client's family, attending practitioner, or other practitioner or supplier;
- necessary and consistent with generally accepted professional medical standards;
- monitored and assessed regularly by the attending practitioner to determine effectiveness and necessity.

The CRDP will fund oral nutritional supplements for a ~~durational~~ period of ~~6 months or less as needed as~~ prescribed by the physician or licensed practitioner. ~~The durational period is dependent upon the client's medical and financial situation. If the client will need the supplement past the authorized durational period, the practitioner must submit another Certificate of Medical Necessity Form. Upon submission CRDP will redetermine eligibility. Claims submitted without prior approval, or exceeding the authorized durational period may be denied.~~

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**OFFICE OF THE SECRETARY**

26 Delaware Code, §352(6) (26 Del.C., §352(6))

**7 DE Admin. Code 106**

**Secretary's Order No.: 2006-W-0027**

**I. Background**

A public hearing was held on May 1, 2006 at the Delaware Energy Office, 146 South Governors Avenue, in Dover, Delaware, to receive public comment on a new regulation, *Environmental Standards for Eligible Energy*

*Resources*, as required by Senate Bill 74, "Renewable Energy Portfolio Standards" (hereinafter referred to as "RPS"). The purpose of this regulation is to prescribe procedures relating to the Renewable Energy Portfolio Standards Act, pursuant to 26 **Del.C.** Ch. 1, Subchapter IIIA. This regulation prescribes environmental standards for hydroelectric facilities and for the combustion of biomass. These standards determine if a resource is an Eligible Energy Resource under the Act. These regulations are promulgated under authority of 26 **Del.C.** Ch. 1, §352(6) and 26 **Del.C.** Ch. 1, Section 1. Also affected by this proposed regulation is the Delaware Public Service Commission Regulation Docket 56.

Present at this public hearing on May 1, 2006, was Brian Gallagher, contractor from the Delaware Public Service Commission, who assisted the Delaware Energy Office with drafting this proposed regulation. Also present at the hearing were Bill and Roberta Glenn, private citizens from Seaford, Delaware, and Alan Muller, Executive Director of Green Delaware. Questions and comments which could not be answered by the Department at the time of the hearing concerning these proposed regulations were later formally responded to directly by the Energy Office. These responses to the public's questions were summarized in a formal Memorandum submitted to the Hearing Officer on June 1, 2006. Proper notice of the hearing was provided as required by law.

## **II. Findings and Conclusions**

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the July 12, 2006 Hearing Officer's Report, which is attached and incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

## **III. Order**

In view of the above findings, it is hereby ordered that Delaware's *Environmental Standards for Eligible Energy Resources* Regulation, as required by Senate Bill 74, "Renewable Energy Portfolio Standards", be promulgated in final form in the customary manner and established rule-making procedure required by law.

## **IV. Reasons**

The development of these new regulations, together with the assistance of the Public Service Commission in the area of enforcement of the same, will provide a significant energy benefit for the current citizens of the State of Delaware, as well as for future generations to come. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency, again, in concert with the PSC, to address the energy issues affecting Delaware at this time. In developing these regulations, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and wide array of public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

Date of Issuance: July 17, 2006

Effective Date of the Amendment: August 11, 2006

### **106 Environmental Standards for Eligible Energy Resources**

#### **1.0 Purpose**

The purpose of this regulation is to prescribe procedures relating to the Renewable Energy Portfolio Standards Act pursuant to 26 **Del.C.** Ch. 1, Subchapter IIIA. This regulation prescribes environmental standards for hydroelectric facilities and for the combustion of biomass. These standards determine if a resource is an Eligible Energy Resource under the Act.

#### **2.0 Statutory Authority**

These regulations are promulgated under authority of 26 **Del.C.** Ch. 1, §352 (6) and 26 **Del.C.** Ch. 1, Section 1

### **3.0 Definitions**

For purposes of this regulation, the following words and phrases shall have the meanings set forth below.

**"Agricultural Food and Feed Crop Residues"** means the organic matter by-products from the harvesting, cultivation, and/or processing of agricultural food and feed crops.

**"Biomass"** means organic matter that is available on a renewable or recurring basis, including timber, aquatic plants, dedicated energy crops, agricultural food and feed crop residues, forestry and timber residues, and lumber/pulp residues.

**"Dedicated Energy Crops"** means any organic matter, including traditional agricultural crops but excluding trees, that is cultivated to be used as a fuel in electricity production.

**"Forestry and Timber Residues"** means the organic matter by-products from the harvesting and/or cultivation of timber.

**"Hydroelectric Facility"** means any technology that produces electric power by harnessing the energy potential of moving water.

**"Low Impact Hydropower Institute"** means the non-profit 501(c) (3) organization dedicated to reducing the impacts of hydroelectric generation through the certification of environmentally responsible, "low impact" hydropower.

**"Lumber/Pulp Residues"** means the sawdust and other wood by-products from the production of lumber, pulp, or other wood-derived products.

**"Timber"** means the trees harvested for the use as an energy source, lumber, or pulp.

**"United States Department of Agriculture's National Organic Program"** means the rules and regulations that establish the national standards for the production and handling of organically produced products.

### **4.0 Electricity Generated by a Hydroelectric Facility**

To be an Eligible Energy Resource under the Act, a hydroelectric facility shall:

4.1 Have a maximum design capacity of 30 megawatts or less from all generating units combined.

4.2 Not diminish water quality and/or adversely impact watersheds.

4.3 Provide an adequate water flow for protection of aquatic life and for safe and effective fish passage.

4.4 Protect state federally-designated threatened and endangered species and their habitat.

4.5 Protect cultural and historic resources.

4.6 Preserve or improve public access and recreation opportunities.

4.7 Meet the certification standards established by the Low Impact Hydropower Institute or their

successors.

### **5.0 Electricity Generated from the Combustion of Biomass**

To be an Eligible Energy Resource under the Act, electricity generated from the combustion of biomass shall:

5.1 Meet all federal, state, and local government laws and regulations for land use, air emissions, use of cooling water, and ash management.

5.2 For dedicated energy crops and agricultural food and feed crop residues they shall meet the standards of the United States Department of Agriculture's National Organic Program, or take all of the following actions:

5.2.1 Follow all best management practices of local conservation districts and state and local cooperative extension services.

5.2.2 Develop and implement all voluntary and mandatory state and local government nutrient management plans.

5.2.3 Develop and follow comprehensive plans to utilize land and water resources in accordance with state and local non-point source pollution management programs to prevent erosion, control flood water, and conserve soil.

5.2.4 Follow state and local Integrated Pest Management guidelines and plans.

5.2.5 Minimize herbicide usage in conventional and no-till plantings in accordance with state and local cooperative extension services guidelines and plans.

5.3 For timber, forestry and timber residues, and non-cultivated wild plants, develop and implement a conservation and management plan that includes all the following elements:

5.3.1 A non-point source pollution management program to prevent erosion, control flood water, and conserve soil for harvesting, road construction, and all other mechanical disturbances.

5.3.2 Best Management Practices as identified by the state and local forestry services.

5.3.3 Minimization of waste associated with harvesting and on-site processing operations.

- 5.3.4 Rates of harvest that do not exceed levels which can be permanently sustained.
- 5.3.5 Safeguards that identify and protect rare and state and federally-designated threatened and endangered species and their habitats (e.g., nesting and feeding areas).
- 5.3.6 Forest regeneration that enhances ecosystem diversity.
- 5.3.7 Use of environmentally friendly non-chemical methods of pest management and limited use of pesticides.
- 5.3.8 Use of environmentally friendly non-chemical methods of weed management and limited use of herbicides.
- 5.3.9 Use of exotic species that is carefully controlled and actively monitored to avoid adverse ecological impacts.
- 5.3.10 Avoidance of forest conversion to plantations or non-forest land uses, except circumstances where: a very limited portion of the forest management unit will be impacted; forest lands are of low ecological value; and conversion will improve ecological value.
- 5.3.11 Protection of cultural and historic resources.
- 5.3.12 Preservation or improvement of public access and recreation opportunities.
- 5.3.13 Exclusion of old-growth timber (from a tree that is 150 years old or older).

**6.0 Severability**

If any section, subsection, paragraph, sentence, phrase or word of these regulations is declared unconstitutional by a court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

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**DIVISION OF AIR AND WASTE MANAGEMENT**

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

**1302 Regulations Governing Hazardous Waste****ORDER****Secretary's Order No.: 2006-A-0033****I. Background**

On June 28, 2006 a public hearing was held in the DNREC Auditorium at the Richardson and Robbins Building in Dover, Delaware, to receive comment on proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste*. The State of Delaware is authorized by the U.S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program. In order for Delaware to maintain its program delegation and authority, EPA requires Delaware to maintain a program that is equivalent and no less stringent than the federal program.

Many of the changes which DNREC is proposing to make are already in effect at the federal level. Additionally, the State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations, in order to improve or enhance the performance of the hazardous waste management program.

Of note is the fact that the Department held a public workshop regarding these proposed amendments back on April 6, 2006, which was well attended, and provided a meaningful exchange between the public and the Department regarding this matter. No additional questions and/or comments were received by the Department subsequent to the April 6, 2006 workshop, nor were any members of the public present at the hearing on June 28, 2006. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated July 6, 2006, and that Report is expressly incorporated herein by reference.

**II. Findings and Conclusions**

On the basis of the record developed in this matter, it appears that the Department has provided a sound basis

with regard to the proposed regulatory action concerning the amendments to Delaware's Hazardous Waste Regulations. Furthermore, the Department provided the public with numerous opportunities to offer comments with respect to this issue, with a workshop offered prior to the public hearing, should anyone wish to contribute same.

### III. Order

It is hereby ordered that the proposed adoption of the amendments to Delaware's Hazardous Waste Regulations be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

### IV. Reasons

The adoption of the proposed amendments will allow Delaware's existing Hazardous Waste Program to maintain its State program delegation and authority, and further bring Delaware's existing regulations into conformity and equivalency with current U.S. Environmental Protection Agency requirements. Furthermore, promulgation of these proposed amendments will allow the Department to correct errors present in the existing regulations, as well as to add consistency and/or clarification to the same. Lastly, this promulgation will continue to ensure safety of the public health and environment, while taking into account industry concerns, and will assist the Department in furtherance of the policy and purposes of 7 **Del.C.**, Chapters 60 and 63.

John A. Hughes, Secretary

Date of Issuance: July 7, 2006

Effective Date of the Amendment: August 21, 2006

**\* Please note that no changes were made to the regulation as originally proposed and published in the June 2006 issue of the *Register* at page 1854 (9 DE Reg. 1854). Therefore, the final regulation is not being republished. Please refer to the June 2006 issue of the *Register* or contact the Department of Natural Resources and Environmental Control, Division of Air and Waste Management.**

**A complete set of the rules and regulations for the Division of Air and Waste Management are available at: <http://www.dnrec.delaware.gov.htm>**

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## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 1770 Respiratory Care Advisory Council

Statutory Authority: 24 Delaware Code, Section 1775(c) (24 **Del.C.** §1775(c))

24 **DE Admin. Code** 1770

### ORDER

The Respiratory Care Practice Advisory Council ("Council") established to assist the Board of Medical Practice ("Board") in the performance of its duty relating to the regulation of Respiratory Care Practitioners is authorized by 24 **Del.C.** §1775(c) to promulgate rules and regulations governing the practice of respiratory care.

Pursuant to 24 **Del.C.** §1775(c), the Council proposes to modify Regulation **8.0 Continuing Education** by amending subsection 8.6.7 to clarify the continuing education requirements that must be met by a licensee seeking to reinstate a license that has been lapsed for less than three (3) years. The proposal also adds new subsections 8.6.8 and 8.6.9 establishing additional requirements for applicants who wish to obtain reinstatement after the applicant's prior license has been expired for three or more years. In addition, the proposal modifies Regulation **10.0 Application for a License** by amending subsection 10.2.1.4 to provide that individuals who have not been licensed in any jurisdiction within three (3) years of initially passing the National Board for Respiratory Care, Inc., (NBRC) entry level examination will be required to re-take the NBRC examination and provide proof of a current passing score before a license will be

issued.

The new subsections delineate the requirements for those applicants who have been engaged in the active practice of respiratory care during the period of lapse and those who have not.

Pursuant to 29 **Del.C.** §10115, notice of the proposed amendments to the rules and regulations was published on April 1, 2006 in the *Delaware Register of Regulations*, Volume 9, Issue 10. Public notice of these proposed modifications to the Rules and Regulations was also published in two (2) newspapers of general circulation. Notice of the rescheduling of the initial hearing date to May 16, 2006 was published in the *Delaware Register of Regulations*, Volume 9, Issue 11, on May 1, 2006 as well as in two (2) newspapers of general circulation.

Pursuant to such notice a public hearing was conducted by the Council on May 16, 2006.

### **Summary of the Evidence and Information Submitted**

No members of the public attended the hearing. No written comment adverse to the proposed modifications was received by the Council. Two (2) comments were posted on the Online Regulation Public Comment System. The first comment was from John Emberger who stated that the proposed changes looked fine to him. The second comment was received from Debbie Marskese, A.I. DuPont Hospital for Children, who did not make any comments for or against the proposal but asked for a representative to speak at the next full state Delaware Society for Respiratory Care (DSRC) meeting to review the proposed changes.

### **Findings of Fact with Respect to the Evidence and Information Submitted**

There was no public comment received at the public hearing. One written comment was received supporting the modifications and one comment did not address the merits of the proposed changes.

The Council finds that the amendments to the regulations are necessary to clarify that a licensee whose license has been lapsed for less than three (3) years must complete 20 hours of continuing education during the two-year period preceding the application for renewal. The amendments are also necessary to ensure that licensees who have allowed their licenses to lapse for three (3) or more years demonstrate proof of active practice satisfactory to the Council in another jurisdiction during the period of lapse and demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application. Finally, the amendments to the regulations are necessary to ensure the competency of applicants who have not practiced for more than three years after taking the NBRC by requiring them to retake the entry level examination prior to licensure and provide proof of passing score.

The Medical Practice Act *Statement of Purpose* at 24 **Del.C.** §1701 provides:

“Recognizing that the practice of medicine and the practice of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interest of public health, safety and welfare to provide laws covering the granting of those privileges and their subsequent use and control to provide regulations to the end that the public health, safety and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons unauthorized to practice medicine or to practice certain other healthcare professions.”

The Council finds that the proposed amendments meet the Council’s primary objectives of protecting the public and ensuring minimum standards of practitioner competency necessary to promote the public health, safety and welfare.

In summary, the Council finds that adopting the proposed amendments to regulation **8.0 Continuing Education** and regulation **10.0 Application for a License** meet the objectives of protecting the public as set forth in 24 **Del.C.** §1701 and is in the best interest of the citizens of the State of Delaware.

### **The Law**

The Board’s rulemaking authority is provided by 24 **Del.C.** §1775(c).

## Recommendation

Based on these findings, conclusions and the above discussion, it is the recommendation of the undersigned members of the Respiratory Care Practice Advisory Council to the Board of Medical Practice that the Board approve these changes to the Rules and Regulations of the Respiratory Care Practice Advisory Council to be effective ten (10) days after their final publication in the *Delaware Register of Regulations*.

**Respectfully submitted this 20th day of June, 2006:**

Amy Thomas, M.Ed., RRT, Chairperson  
 Patricia Resnik, RRT  
 Billie Speakman, RRT  
 Kelley L. Stokley

Dawn M. Selhorst, RRT, Vice Chairperson  
 Robert Moser, RRT  
 Nasreen Khan, D.O.

**By Order of the Board of Medical Practice of the State of Delaware**

**AND NOW**, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2006;

**WHEREAS**, the Board has considered the attached Report of the Respiratory Care Practice Advisory Council concerning the hearing on the proposed modifications of the Rules and Regulations of the Respiratory Care Practice Advisory Council; and

**WHEREAS**, the Board has determined to accept such Report and approve the proposed Rule and Regulation modifications set forth in the attached report.

**NOW THEREFORE:**

1. The proposed modifications to the Rules and Regulations of the Respiratory Care Practice Advisory Council as set forth on the attached report are hereby approved.

**IT IS SO ORDERED:**

Karl McIntosh, M.D., President  
 Francis Marro, M.D.  
 Roberto Villasenor, M.D.  
 Vincent Lobo, D.O.  
 Mr. Raymond L. Moore, Sr., Public Member  
 Margaret Prouse, Ed.D, Public Member  
 Anthony M. Policastro, M.D.

Galicano Inguito, M.D.  
 Mr. Vance Daniels, Public Member  
 James Salva, M.D.  
 Ray A. Blackwell, M.D.  
 Mr. George Brown, Public Member  
 Lindsey Slater, M.D.  
 Mr. John W. Banks, Public Member

**1770 Respiratory Care Advisory Council**

**1.0 Definitions**

**“Board”** - means Delaware Board of Medical Practice.

**“Certified Respiratory Therapy Technician (CRTT)”** - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level respiratory therapy practitioners.

**“Council”** - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

**“Direct Supervision”** - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

**“General Supervision”** - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

**“NBRC”** means the National Board for Respiratory Care, Inc.

**“Programs Approved by the Board”** - means initial course of study programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organizations which have been approved by the Board.

**“Registered Respiratory Therapist (RRT)”** - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

**“Respiratory Care”** - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under 24 **Del.C.** §1770B(a)(2), Medical Practices Act.

**“Respiratory Care Practitioner (RCP)”** - means an individual who practices respiratory care under 24 **Del.C.** §1770B(a)(1) and (7), Medical Practices Act.

**“Student Respiratory Care Practitioner (Student-RCP)”** - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by the Board.

**“Working Student Respiratory Care Practitioner”** - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

## **2.0 Purpose**

The purpose of the standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Board to evaluate safe and effective practice of respiratory care.

## **3.0 Standards of Practice for the Respiratory Care Practitioner**

3.1 The respiratory care practitioner shall conduct and document respiratory care assessments of individuals and groups by various appropriate means including but not limited to the following:

3.1.1 Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner.

3.1.2 Sorting, selecting, reporting, and recording the data.

3.1.3 Analyzing data.

3.1.4 Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members.

3.1.5 Evaluating data.

3.1.6 Respiratory care practitioners shall establish and document data that serves as the basis for the strategy of care.

3.2 Respiratory care practitioners may develop strategies of care such as a treatment plan.

3.3 Respiratory care practitioners may participate under the direction and supervision of a physician in the implementation of patient care.

## **4.0 Standards Related to the Respiratory Care Practitioner’s Competence and Responsibilities**

4.1 Respiratory care practitioners shall:

4.1.1 Have knowledge of the statutes and regulations governing the practice of respiratory care.

4.1.2 Accept responsibility for competent practice of respiratory care.

4.1.3 Obtain instructions and supervision from physicians.

4.1.4 Function as a member of a health care team by collaborating with other members of the team to provide appropriate care.

4.1.5 Consult with respiratory care practitioners and others and seek guidance as necessary.

4.1.6 Obtain instruction and supervision as necessary when implementing respiratory care techniques.

4.1.7 Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of respiratory care within the employment setting.

4.1.8 Report unsafe respiratory care practice and conditions to the Respiratory Care Practice Advisory Council, (Council), or other authorities as appropriate.

4.1.9 Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability.

4.1.10 Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems.

4.1.11 Respect patients’ right-to-privacy by protecting confidentiality unless obligated by law to disclose the information.

4.1.12 Respect the property of patients and their families.

4.1.13 Teach safe respiratory care practice to other health care workers as appropriate.

**5.0 Administration of Medications**

5.1 Respiratory care practitioners may administer pharmacological agents, aerosols, or medical gases via the respiratory route. Administration of medication by routes other than the respiratory route require the direct supervision of a physician.

5.2 A respiratory care practitioner shall not deliver any medication unless the order, written or oral by a physician or other person authorized by the Board of Medical Practice, to prescribe that class of medication includes:

- 5.2.1 Patient identification
- 5.2.2 Date of the order
- 5.2.3 Time of the order
- 5.2.4 Name of medication
- 5.2.5 Dosage
- 5.2.6 Frequency of administration
- 5.2.7 Route of administration
- 5.2.8 Method of administration

No respiratory care practitioner holding a permit or a license in the state of Delaware may administer medications for the testing or treatment of cardiopulmonary impairment for which the respiratory care provider is untrained or incompetent.

5.3 Respiratory care practitioners must be able to document appropriate training and proficiency on the route of medication delivery, drug pharmacology, and dosage calculations for any cardiopulmonary medications for which they are responsible to administer. Appropriate training includes but is not limited to the following components:

5.3.1 Pharmacology. Subject matter shall include terminology, drug standards, applicable laws and legal aspects, identification of drugs by name and classification, and the principles of pharmacodynamics of medications used in the treatment and testing of cardiopulmonary impairment.

5.3.2 Techniques of drug administration. Subject matter shall include principles of asepsis, safety and accuracy in drug administration, applicable anatomy and physiology, and techniques of administration and any route of administration for cardiopulmonary medications that fall within the legal scope of practice of a respiratory care practitioner.

5.3.3 Dosage calculations. Subject matter shall include a review of arithmetic and methods of calculation required in the administration of drug dosages.

5.3.4 Clinical experience. Subject matter shall include clinical experience in administration of the cardiopulmonary medication(s), planned under the direction of a qualified respiratory care practitioner or other qualified health care provider responsible for teaching cardiopulmonary medication administration.

5.3.5 Role of the respiratory care practitioner in administration of cardio-pulmonary medications. Subject matter shall include constraints of medication administration under the legal scope of practice for respiratory care practitioners, the rationale for specific respiratory care in relation to drug administration; observations and actions associated with desired drug effects, side effects and toxic effects; communication between respiratory care practitioners and other health care teams; respiratory care practitioner - client interactions; and the documentation of cardiopulmonary medication administration.

5.4 Each respiratory care practitioner shall maintain a record that documents training and proficiency and medications that each practitioner is authorized to administer. At the request of the Council such records may be audited, reviewed, or copied.

5.5 Documentation of medication administration by the respiratory care practitioner shall include at a minimum:

- 5.5.1 Patient identification
- 5.5.2 Date of the order
- 5.5.3 Time of the order
- 5.5.4 Name of medication
- 5.5.5 Dosage
- 5.5.6 Frequency of administration
- 5.5.7 Route of administration
- 5.5.8 Method of administration
- 5.5.9 Respiratory care practitioner's name
- 5.5.10 Date and time of administration
- 5.5.11 Documentation of effectiveness

5.5.12 Documentation of adverse reactions and notifications if any

## **6.0 Disciplinary Proceedings**

6.1 The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.

6.2 Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed or may be placed on probation.

### **6.3 Unprofessional Conduct**

Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:

6.3.1 Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include violations of 24 **Del.C.** §1770B or of these regulations.

6.3.2 Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.

6.3.3 Performing new respiratory care techniques and/or procedures without adequate education and practice or without proper supervision.

6.3.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.

6.3.5 Inaccurately recording on, falsifying or altering a patient or agency record.

6.3.6 Committing verbal, physical or sexual abuse or harassment of patients or co-employees.

6.3.7 Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.

6.3.8 Delegating respiratory care responsibilities to unqualified persons.

6.3.9 Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.

6.3.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.

6.3.11 Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.

6.3.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law.

6.3.13 Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.

6.3.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so.

6.3.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so.

6.3.16 Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.

6.3.17 Allowing another person to use his/her license or temporary permit to provide respiratory care for any purpose.

6.3.18 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a respiratory care practitioner or other health care provider.

6.3.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice respiratory care.

6.3.20 Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1.8.

6.3.21 Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

### **6.4 Disciplinary Investigations And Hearings**

6.4.1 Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against a respiratory care practitioner and the process established by 29 Del.C. §8807 shall be followed with respect to any such matter.

6.4.2 Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to 29 Del.C. §8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

## 7.0 Working Student Respiratory Care Practitioner

7.1 A working student respiratory care practitioner may only practice under the direct supervision of a licensed respiratory care practitioner. The scope of practice is limited to those activities for which there is documented evidence of competency.

7.2 Direct supervision means that a licensed respiratory care practitioner will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed respiratory care practitioner.

7.3 A student may apply for a student temporary permit. If approved by the Board, such permit may be issued by the Division of Professional Regulation and may not be renewed. An application will be considered by the Council provided that the applicant meets the following criteria:

7.3.1 Applicant is matriculated in an approved Respiratory Care Program.

7.3.2 Application is submitted no more than 20 weeks prior to the program's announced graduation date.

7.3.3 Applicant shall submit to the Council a certified list of respiratory care services which have been successfully completed as a part of the respiratory care curriculum.

7.4 A student temporary permit shall automatically cease upon graduation or on the date that the holder is no longer matriculated in and not a graduate of a Respiratory Care Program. Any holder of a temporary student permit which ceases for any of the reasons stated above shall within five (5) working days surrender the permit to the Division of Professional Regulation.

7.5 Subject to Rule 7.4, a student temporary permit shall be valid for 16 weeks.

7.6 Respiratory care services which may be performed by the holder of a student temporary permit are limited to only those services which have been successfully completed by the student as part of a respiratory care program. Successful completion of these services must be certified by the program director on the Verification of Respiratory Care Education Form and submitted to the Council along with an attached competency check list. The holder of the student temporary permit must also meet the employer's standards for those procedures in specified patient care situations.

## 8.0 Continuing Education

8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1.2 Contact hours shall be prorated for new licensees in accordance with the following schedule:

|   |          |
|---|----------|
| Two years remaining in the licensing cycle requires - | 20 hours |
| One year remaining in the licensing cycle requires -  | 10 hours |
| Less than one year remaining in the                   |          |

licensing cycle -

exempt

**8.2 Exemptions**

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

**8.3 Criteria for Qualification of Continuing Education Program Offerings**

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

**8.3.1 Definition of Contact Hours**

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

**8.3.2 Learner Objectives**

8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

**8.3.3 Subject Matter**

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

**8.3.4 Description**

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

**8.3.5 Types of Activities/Programs**

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the

framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the following elements:

8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

- Recredential exam.
- Pediatric/perinatal specialty exam.
- Pulmonary function credentialing exams
- Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

#### 8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

- American Association for Respiratory Care.
- American Medical Association under Physician Category I.
- American Thoracic Society
- American Association of Cardiovascular and Pulmonary Rehabilitation
- American Heart Association
- American Nurses Association
- American College of Chest Physicians
- American Society of Anesthesiologists
- American Sleep Disorders Association
- Other professional or educational organizations as approved periodically by the Council.

#### 8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours per renewal period shall include the following categories:

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

8.5.2.6 Academic course work, related to health care or health care administration, to a maximum of four contact hours.

## 8.6 Review/Approval of Continuing Education Contact Hours

8.6.1 The Council may review the documentation of any respiratory care practitioner's continuing education.

8.6.2 The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6.3 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6.4 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6.5 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6.6 Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.

8.6.7 An applicant wishing to reinstate an expired license during the three (3) year period permitted under subsection 8.6.6 shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

8.6.8 An applicant whose license has been expired for a period of three (3) or more years and who has been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement demonstrating proof of active practice satisfactory to the Council and shall demonstrate proof of completion of 20 hours of continuing education during the two-year period preceding the application.

8.6.9 An applicant whose license has been expired for three (3) or more years and who has not been actively engaged in the practice of respiratory care during the period of expiration shall be required to submit an application for reinstatement and shall be required to give evidence of satisfactory completion of an approved respiratory care examination within two (2) years prior to the application for reinstatement before licensure will be granted. In addition the applicant shall demonstrate completion of 20 hours of continuing education during the two-year period preceding the application.

**4 DE Reg. 694 (10/1/00)**

**8 DE Reg. 1438 (4/1/05)**

**8 DE Reg. 1587 (5/1/05)**

## 9.0 Renewal of License

9.1 To renew a license to practice respiratory care, a licensee must complete a renewal form provided by the Division of Professional Regulation certifying completion of continuing education.

9.2 Renewal notices will be mailed by the Division of Professional Regulation sixty (60) days prior to the expiration of the license.

### 10.0 Application for a License

#### 10.1 Application

10.1.1 An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.

#### 10.2 Completed Application

10.2.1 An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:

10.2.1.1 Non-refundable application fee

10.2.1.2 Completed application for licensure

10.2.1.3 Verification of education form

10.2.1.4 Verification of national examination score. Individuals who have not been licensed in any jurisdiction within three (3) years of initially passing the NBRC entry level examination will be required to re-take the NBRC examination and provide proof of a current passing score before a license will be issued.

10.2.1.5 Letter(s) of good standing from other states where the applicant may hold a license, if applicable.

10.2.1.6 Any other information requested in the application.

#### 10.3 Appeals Process

10.3.1 When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under 24 **Del.C.** §1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under 29 **Del.C.** §10131.

### 11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

11.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that

chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 11.8 of this section.

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

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

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

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

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

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

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

11.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

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

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

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

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

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

**7 DE Reg. 761 (12/1/03)**

**8 DE Reg. 1438 (4/1/05)**

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER EIGHTY-EIGHT**

**RE: Recognizing and Establishing The Delaware Science and Technology Council**

**WHEREAS**, science and technology-based research, education, business and economic development has been, and continues to be, critical to the growth and prosperity of Delaware; and

**WHEREAS**, the emergence of a knowledge-based economy will require participation in new areas of endeavor such as the life sciences, biotechnology, nanotechnology and alternative energy; and

**WHEREAS**, effective collaboration among the public, private and academic communities is a unique Delaware strength; and

**WHEREAS**, it is critical that Delaware use these collaborations and partnerships to create new economic opportunities for Delawareans now and in the future; and

**WHEREAS**, these actions will help make Delaware a leader in emerging areas such as life sciences, biotechnology, nanotechnology and alternative energy,

**NOW THEREFORE, I RUTH ANN MINNER**, by the power vested in me as Governor of the State of Delaware, hereby declare and order that:

I. The Delaware Science and Technology Council (the "Council") shall be established as a statewide organization responsible to:

- (a) Improve the competitive position of Delaware so that it is recognized broadly as a center of excellence in science and technology;
- (b) Provide advice, guidance and advocacy on issues and opportunities in research, education, business, economic development and public policy;
- (c) Develop and implement a statewide science and technology strategic plan;
- (d) Foster Delaware's uniqueness as a dynamic place for scientific and business talent by developing an innovative, entrepreneurial and business friendly environment, facilitating incubation and commercialization and encouraging collaborations within the State and the region;
- (e) Identify and secure resources to support Council initiatives in cooperation with the Council on Competitiveness and other appropriate state and regional initiatives;
- (f) Coordinate and foster communication between different areas of science and technology to discover unique opportunities at the interfaces of different business sectors;
- (g) Identify sources of seed and venture capital;
- (h) Become recognized as a reputable resource to help understand science and technology issues and opportunities and as a source of relevant information; and
- (i) Provide oversight to the State's NSF-EPSCoR office (National Science Foundation ñ Experimental Program to Stimulate Competitive Research) and execution of the EPSCoR RII (Research Infrastructure Initiative) grant, with the purpose of building research and development capacity.

II. Council Membership.

The Council shall have between 20 and 25 members representing leadership from the academic, public and private sectors. The Chair and Vice Chair must come from different sectors, i.e., one from the public sector and the other from the private sector or academia. The Chair, Vice Chair and Council members will be appointed by the Governor.

Designated positions on the Council will include:

- (a) The Provosts of the three public institutions of higher education;
- (b) The Secretary of Agriculture;

- (c) A representative from the Governor's Office;
- (d) The Director of the Delaware Economic Development Office;
- (e) Four members of the General Assembly, one appointed by the President Pro Tempore of the

Delaware State Senate, one appointed by the Minority Leader of the Delaware State Senate, one appointed by the Speaker of the Delaware House of Representatives and one appointed by the Minority Leader of the Delaware House of Representatives; and

(f) The remaining members will be public members appointed by the Governor, the majority coming from the private sector, representing (1) the critical business segments and (2) business life cycle from incubation to maturity.

All appointed members shall serve at the pleasure of the person appointing them.

**III. Council sub-committees.**

The Council will be served by Science and Technology Sub-Committees responsible for specific science and technology segments. The Chair and membership of each sub-committee will be drawn from the academic, public and private sectors as appropriate. Each sub-committee will be responsible to develop a strategic plan for review with the Council and each will be supported by a member of an administrative group chaired by the Director of the Delaware Biotechnology Institute. The segments to be addressed initially include human health, agriculture and natural resources, alternative energy, nanotechnology, education/work force development and oversight of the State's NSF-EPSCoR initiative.

Approved: June 20, 2006

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

# GOVERNOR'S APPOINTMENTS

| BOARD/COMMISSION<br>OFFICE  | APPOINTEE   | TERM OF<br>OFFICE                                    |
|---|---|--|
| Atlantic States Marine Fisheries Commission                               | Timothy R. Targett, Ph.D.   | 05/10/2009   |
| Diamond State Port Corporation, Board of Directors, Chair                 | The Honorable Richard S. Cordrey  | Pleasure of the Governor                             |
| Diamond State Port Corporation, Board of Directors                        | Mr. J. Brian Murphy   | 06/30/2009   |
| Diamond State Port Corporation, Director                                  | Mr. H. Hickman Rowland, Jr.   | 05/10/2009   |
| Board of Funeral Services   | Mr. Austin L. Grice, Jr.  | 06/06/2009   |
| Board of Geologists   | Ms. Kimberly K. McKenna<br>Mr. William S. Schenck<br>Mr. Steven Smailer | 08/25/2008<br>06/06/2009<br>06/06/2009               |
| Board of Medical Practice   | Vincent Lobo, Jr., D.O.   | 06/07/2009   |
| Board of Parole   | Mr. William C. Pfeifer  | 05/10/2010   |
| Board of Pension Trustees, Trustee  | Ms. Nancy J. Shevock  | 06/22/2010   |
| Board of Pilot Commissioners  | Mr. Charles F. Macintire  | 05/18/2011   |
| Board of Professional Counselors of Mental Health and Chemical Dependency | Ms. Mary E. Krieger   | 06/30/2009   |
| Board of Professional Land Surveyors                                      | Mr. Victor F. Kennedy   | 06/06/2009   |
| Board of The Sewell C. Biggs Collection                                   | Mr. Donald A. Parks<br>Ms. Mary Jane Richter                            | Pleasure of the Governor<br>Pleasure of the Governor |
| Child Death, Near Death and Stillbirth Review Commission                  | Phillip A. Shlossman, M.D.  | 06/06/2009   |
| Child Protection Accountability Commission, Chair                         | Mr. C. Malcolm Cochran, IV  | Pleasure of the Governor                             |
| Child Protection Accountability Commission, Member                        | Ms. Mary Lou Edgar  | Pleasure of the Governor                             |
| Child Placement Review Board, Kent  | Ms. Ellen W. Holler<br>Mr. Rodney C. Smith                              | 06/06/2009<br>06/06/2009                             |

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# GOVERNOR'S APPOINTMENTS

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| BOARD/COMMISSION<br>OFFICE                                      | APPOINTEE   | TERM OF<br>OFFICE  |
|---|---|--|
| Child Placement Review Board, New Castle                        | Ms. Mary K. Field   | 06/06/2009   |
| Committee on Employment of People with<br>Disabilities          | Ms. Margaret Rivera   | 06/06/2009   |
| Community Involvement Advisory Council                          | Bruce E. Allison, Ph.D.<br>Anthony J. Julis, Ph.D.  | 06/12/2009<br>06/12/2009   |
| Council on Archives   | Mr. E. Michael DiPaolo<br>Mr. Edward J. Freel<br>Mr. Richard L. Puffer<br>The Honorable William T. Quillen<br>Mr. George C. Wright, Jr. | 07/20/2007<br>06/06/2009<br>06/06/2009<br>06/06/2009<br>06/06/2009 |
| Council on Game and Fish  | Mr. Wayne G. Steele   | 06/13/2009   |
| Council on Real Estate Appraisers                               | Mr. Richard W. Bauermeister<br>Mr. Neal J. Scott<br>Mr. Donald E. West  | 06/06/2009<br>06/06/2009<br>06/06/2009                             |
| Criminal Justice Council  | Ms. Lisa I. Gillespie   | Pleasure of the<br>Governor  |
| Delaware Bicycle Council  | Mr. Fred N. Breukelman  | 06/06/2008   |
| Delaware Board of Examiners of Nursing<br>Home Administrators   | Mr. Jerrold P. Spilecki   | 06/06/2009   |
| Delaware College Investment Plan Board                          | Mr. Santosh P. Viswanathan  | 05/24/2009   |
| Delaware Health Care Commission                                 | Mr. Theodore W. Becker, Jr.   | 05/16/2007   |
| Delaware Health Resources Board                                 | Mr. Timothy J. Constantine<br>Ms. Linda S. Heller   | 06/06/2009<br>06/06/2009   |
| Delaware Humanities Council                                     | Mr. Robert M. Shea  | 06/06/2009   |
| Delaware Interscholastic Athletic<br>Association                | Gerald L. Allen<br>Ms. Catherine C. Marvel<br>Mr. John E. Oliver  | 06/29/2009<br>06/29/2009<br>06/30/2009                             |
| Delaware Natural Areas Advisory Council                         | Mr. Daniel W. Magee   | 05/10/2010   |
| Delaware Nursing Home Residents<br>Quality Assurance Commission | Mr. Brian L. Posey  | 06/13/2009   |

## GOVERNOR'S APPOINTMENTS

| BOARD/COMMISSION<br>OFFICE                                  | APPOINTEE                        | TERM OF<br>OFFICE           |
|---|----------------------------------|-----------------------------|
| Delaware Nutrient Management<br>Commission                  | Mr. D. Mark Adkins               | 03/15/2009                  |
|   | Mr. Richard W. Sterling          | 03/15/2009                  |
| Delaware Redevelopment Authority                            | Mr. Jeffrey M. Bross             | Pleasure of the<br>Governor |
|   | Mr. John J. Casey, Jr.           | Pleasure of the<br>Governor |
|   | General Arthur V. Episcopo       | Pleasure of the<br>Governor |
|   | The Honorable Robert F. Gilligan | Pleasure of the<br>Governor |
|   | The Honorable Pamela S. Maier    | Pleasure of the<br>Governor |
|   | Mr. Thomas J. McCarthy           | Pleasure of the<br>Governor |
|   | The Honorable David P. Sokola    | Pleasure of the<br>Governor |
| Delaware River and Bay Authority, Commissioner              | Mr. F. Michael Parkowski         | 07/01/2011                  |
| Delaware River and Bay Authority, Member                    | Mr. Samuel E. Lathem             | 07/01/2010                  |
| Delaware Solid Waste Authority                              | Ms. Stephanie L. Hansen          | 06/22/2008                  |
| Delaware Thoroughbred Racing Commission,<br>Commissioner    | Mr. Bernard J. Daney             | 07/17/2012                  |
|   | Mr. Henry J. Decker              | 07/17/2012                  |
|   | Mr. W. Duncan Patterson          | 07/17/2012                  |
| Developmental Disabilities Council                          | Ms. Harline D. Dennison          | 06/13/2012                  |
|   | Michael Gamel-McCormick, Ph.D.   | 06/13/2012                  |
|   | Mr. Dennis L. Rubino             | 06/13/2012                  |
| Enhanced 911 Emergency Reporting<br>System Service Board    | Mr. Tucker M. Kokjohn            | 05/10/2009                  |
|   | Mr. Arthur S. Lewis, Jr.         | 05/10/2009                  |
| Family Court, Commissioner,<br>New Castle County            | Ms. Mary S. Much                 | 05/15/2010                  |
| Greater Wilmington Convention and<br>Visitors Bureau        | Mr. Ernest J. Camoirano          | 06/30/2009                  |
|   | Ms. Cheryl Przelomski            | 06/30/2009                  |
| Governor's Commission on Community and<br>Volunteer Service | Mr. Robert D. Schroeder          | 06/13/2009                  |
|   | Ms. Jessica A. Snow              | 06/13/2009                  |
| Human Relations Commission                                  | Mr. Earnest Gulab                | 06/06/2009                  |

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# GOVERNOR'S APPOINTMENTS

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| <b>BOARD/COMMISSION<br/>OFFICE</b>        | <b>APPOINTEE</b>                  | <b>TERM OF<br/>OFFICE</b> |
|---|-----------------------------------|---------------------------|
| Industrial Accident Board                 | Mr. Harold B. Barber              | 05/10/2012                |
|   | Mr. John D. Daniello              | 05/10/2012                |
|   | Mr. Irving S. Levitt              | 05/10/2010                |
| Interagency Coordinating Council          | Doris E. Woledge, Ed. D.          | 04/12/2008                |
| Kent County Board of Elections            | Ms. Donna K. Sandstrom            | 06/22/2010                |
| Kent County Justice of the Peace          | Mr. Dwight D. Dillard             | 06/02/2010                |
|   | The Honorable Debora Foor         | 06/29/2012                |
|   | Mr. Michael P. Sherlock           | 06/23/2010                |
| New Castle County Board of Elections      | Mr. Robert L. Brady, Jr.          | 06/28/2009                |
|   | Ms. Helen M. Dudlek               | 06/30/2010                |
|   | Mr. Paul F. Lanouette             | 06/30/2010                |
|   | Mr. William F. Steele             | 06/28/2009                |
| New Castle County Justice of the Peace    | The Honorable Bonita N. Lee       | 06/28/2012                |
|   | The Honorable William T. Moser    | 06/30/2012                |
|   | The Honorable Nancy C. Roberts    | 06/28/2010                |
|   | The Honorable James A. Tull       | 06/28/2012                |
| Organ and Tissue Donor Awareness<br>Board | The Honorable Gerald A. Buckworth | 06/06/2009                |
|   | Ms. Mary C. Ciechanowski          | 06/06/2009                |
|   | Ms. Sharon L. Gillespie           | 06/06/2009                |
|   | Ms. Linda C. Wolfe                | 06/06/2009                |
| Professional Standards Board              | Sandra M. Falatek, Ed.D.          | 06/30/2009                |
|   | Ms. Mary M. Furbush               | 06/30/2009                |
|   | Ms. Karen P. Gordon               | 06/30/2009                |
|   | Mr. Richard L. Gregg              | 06/30/2009                |
|   | Ms. Barbara Grogg                 | 06/30/2009                |
|   | Ms. Lori Y. Hudson                | 06/24/2007                |
|   | Ms. Karen Schilling Ross          | 06/30/2009                |
|   | Ms. Kathleen H. Thomas            | 06/24/2007                |
|   | Michael D. Thomas, Ed. D          | 06/30/2009                |
| Carol Vukelich, Ph. D.                    | 06/30/2009                        |                           |
| State Board of Accountancy                | Mr. William D. Fletcher           | 01/12/2007                |
| State Board of Electrical Examiners       | Mr. Jacob A. Good                 | 06/13/2009                |
| State Board of Examiners of Psychologists | Mr. Hollis C. Anglin              | 06/06/2009                |
|   | Martha B. Boston, Ph.D.           | 06/06/2009                |
|   | Gordon J. DiRenzo, Ph.D.          | 06/06/2009                |

## GOVERNOR'S APPOINTMENTS

| BOARD/COMMISSION<br>OFFICE                                 | APPOINTEE                        | TERM OF<br>OFFICE           |
|--|----------------------------------|-----------------------------|
| State Board of Occupational Therapy Practice               | Mr. Michael von Reider           | 06/06/2009                  |
| State Board of Veterinary Medicine                         | Jeffery A. Booth, VDM            | 06/06/2009                  |
| State Coastal Zone Industrial Control<br>Board             | Pallatheri M. Subramanian, Ph.D. | 06/29/2011                  |
| State Emergency Response Commission                        | Mr. James Lee                    | 06/06/2008                  |
| State Employee's Charitable Campaign<br>Steering Committee | Mr. Alan Machtinger              | Pleasure of the<br>Governor |
|  | Ms. Karryl H. McManus            | Pleasure of the<br>Governor |
|  | Mr. Henry Smith                  | Pleasure of the<br>Governor |
| Statewide Independent Living Council                       | Mr. Wayne Carter                 | 01/23/2009                  |
|  | Mr. Scott R. Ward                | 06/06/2009                  |
| Statewide Labor Management Committee                       | Mr. Charles E. Hayward           | Pleasure of the<br>Governor |
| Sussex County Justice of the Peace                         | Ms. Stephani L. Adams            | 07/10/2010                  |
| Unemployment Insurance Appeals Board                       | Mr. Vance G. Daniels, Sr.        | 05/01/2012                  |
| Violent Crimes Compensation Board                          | Ms. Leah W. Betts                | 05/10/2009                  |
| Vocational Rehabilitation Advisory Council<br>for DVI      | Mr. James T. Case, III           | 06/06/2009                  |
|  | Mr. Adam W. Fisher               | 06/06/2009                  |
|  | Ms. Bonita M. Hitch              | 06/06/2009                  |
|  | Ms. Barbara L. Mallory           | 06/06/2009                  |
| Welfare Employment Committee                               | Ms. Beverly M. Fletcher          | 08/30/2008                  |
|  | Mr. Walker Rodgers               | 06/06/2009                  |
|  | Mr. Edward C. Smith              | 06/06/2009                  |
| Wilmington Area Planning Council<br>(WILMAPCO)             | Ms. Lee Ann Walling              | Pleasure of the<br>Governor |

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## DEPARTMENT OF INSURANCE

### FORMS AND RATES BULLETIN NO. 1

#### FILING PROCEDURES: RATES, RULES, POLICY FORMS AND RATING PLANS

**June 20, 2006**

When this bulletin was first issued on March 24, 1983, the Delaware Department of Insurance believed that it was essential that insurers highlight the effect of the individual filings so that the Department could identify and place emphasis on those that had, and continue to have, the greatest impact on Delaware's Citizens. This bulletin, as promulgated in 1983, and subsequently revised, contained forms to be completed by all insurers for all lines of insurance sold in Delaware. While the premise for the original bulletin has not changed, the market has changed along with changes in the technology used to complete and submit filings online instead of by mail. Through the use of website technology, general instructions, procedures, and forms for the submission of rates, forms, advertisements, and rules, as prescribed by the Commissioner, may be found on the Department's website and shall, after this date, be used by insurers when submitting rates, forms, advertisements and rules with this Department.

By this republication of Forms and Rates Bulletin No. 1, the prior bulletin is rescinded and insurers are directed to follow the website instructions with respect to the rates, forms, advertisements and/or rules that are required to be filed in the Delaware Department of Insurance. Any subsequent changes to the required documents will be published on the Department's website only and the insurer shall be responsible for completing the latest form as it is published on the website.

Matthew Denn  
Insurance Commissioner

**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION  
NOTICE OF PUBLIC HEARING**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change DHRC Rules 2 and 8. The Commission will hold a public hearing on the proposed rule changes on August 15, 2006. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

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**PESTICIDES SECTION  
NOTICE OF PUBLIC HEARING**

The State of Delaware, Department of Agriculture, will hold a public hearing on September 5, 2006, 6 p.m., in Conference Room 1, Delaware Department of Agriculture building, 2320 S. Dupont Hwy., Dover, DE.

The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it relates to proposed amendments to the Pesticide Regulations under Title 3, **Delaware Code**, Chapter 12, Pesticide Law. The hearing will be conducted in accordance with Title 29, Chapter 101, Administrative Procedures Act.

Beginning at 6 p.m. comments will be received relating to: additional commercial pesticide application record keeping requirements, increased commercial applicator certification fees, and modifications to the pesticide storage and containment rules.

Title 3, **Delaware Code**, Section 1237, provides the Department with the authority to issue regulations pursuant to this statute.

Interested parties may obtain a copy of the proposed amendments by calling the Department at 1-800-282-8685; by writing the Delaware Department of Agriculture, Pesticides Section, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the *Register of Regulations* site <http://regulations.delaware.gov/>.

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**DEPARTMENT OF EDUCATION**

The Department of Education will hold its monthly meeting on Thursday, August 17, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DELAWARE HEALTH AND SOCIAL SERVICES  
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE  
NOTICE OF PUBLIC COMMENT PERIOD**

**DRA 2005 Income First Rule**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) intends to amend the Division of Social Services Manual (DSSM) regarding Section 6013 of the Deficit Reduction Act (DRA) of 2005 requiring all states follow the "Income First" rule.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2006.

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.

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**DIVISION OF SOCIAL SERVICES  
NOTICE OF PUBLIC COMMENT PERIOD**

**Temporary Assistance for Needy Families (TANF) Employment and Training 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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Temporary Assistance for Needy Families (TANF) Employment and Training 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 and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by August 31, 2006.

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.

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

**Proposed Total Maximum Daily Loads (TMDLs) for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds, Delaware**

**NOTICE OF PUBLIC HEARINGS**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct Public Hearings regarding Proposed Total Maximum Daily Loads (TMDLs) Regulations for nitrogen, phosphorous, and bacteria for the Army Creek, Blackbird Creek, Broadkill River, Cedar Creek, Dragon Run Creek, Leipsic River, Little Creek, Mispillion River, Red Lion Creek, Smyrna River, and St. Jones River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Draft TMDL Regulations for these watersheds were published in the May 1, 2006 issue of the *Delaware Register of Regulations* and were reviewed during public workshops held in May, 2006. All comments received at the workshops and during the May 1 through 31 comment period were considered by the Department. Comments relative to the Blackbird Creek, Broadkill River, Cedar Creek, Leipsic River, Little Creek, Mispillion River, Smyrna River, and St. Jones River did not result in changes to the Draft TMDL Regulations. However, comments did result in enhancements to the technical support documents. Comments relative to Army Creek, Dragon Run Creek, and Red Lion Creek, as well as additional technical analyses, resulted in minor changes to the TMDL Regulations and enhancements to the technical support document. The revised proposed TMDL Regulations for the Army Creek, Dragon Run Creek, and Red Lion Creek watersheds are published, following this notice, in this issue of the *Register*.

**Notice of Public Hearings and Comment Period**

The Public Hearing for the proposed Broadkill River, Cedar Creek, and Mispillion River Watersheds will be held at 6:00 p.m., Tuesday, August 22, 2006 in Room 104, Cannon Lab, University of Delaware College of Marine Studies, Lewes, DE.

The Public Hearing for the proposed TMDLs for the Blackbird Creek, Leipsic River, Little Creek, Smyrna River, and St. Jones River Watersheds will be held at 6:00 p.m., Thursday, August 24, 2006 at the Delaware National Estuarine Research Reserve, 818 Kitts Hummock Road, Dover, DE.

The Public Hearing for the proposed TMDLs for the Army Creek, Dragon Run Creek, and Red Lion Creek Watersheds will be held at 6:00 p.m., Tuesday, August 29, 2006 at DNREC's Lukens Drive Building, 391 Lukens Drive, New Castle, DE.

The hearing records for these watersheds will remain open until 4:30 p.m., Friday, September 15, 2006. Please send written comments to 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) 739-9939, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). All written comments must be received by 4:30 p.m., Friday, September 15, 2006. Electronic submission is preferred.

Copies of the Proposed TMDL Regulations for these watersheds will be available as of Tuesday, August 1, 2006 on the Department's website ([www.dnrec.delaware.gov](http://www.dnrec.delaware.gov)) by clicking on "TMDLs" under "Information" or 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) 739-9939, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). Copies of the TMDL reports and technical support documents for these watersheds will be available on the Department's website as of Monday, August 14, 2006.

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**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES****DIVISION OF FAMILY SERVICES****Office of Child Care Licensing****NOTICE OF PUBLIC HEARING**

**PLEASE TAKE NOTICE**, pursuant to 31 **Del.C.**, Chapter 3, Subchapter III, Subsections 341-345, and 29 **Del.C.**, Chapter 90, Subsection 9003 (7), Delaware's Office of Child Care Licensing is proposing to revise the *Delacare: Requirements For Day Care Centers* that were previously adopted in 1988. From September of 2001 to February of 2003, a task force consisting primarily of early care and education and school-age care program directors along with Licensing Specialists and those whose interests could be affected by the rule changes reviewed the proposed revisions and reached consensus on each rule. Those proposed changes were first presented in early 2004. At the conclusion of those public hearings, a decision was made to withdraw the revisions and conduct a financial analysis on the impact of the rule changes. Based on the previous comments received from the first set of public hearing and the information gained through the financial analysis, compromises were made and a new version was developed. These proposed revisions represents the task force's and the Office of Child Care Licensing's efforts to improve standards based on what we have learned through research and experience since last revising this set of rules. Over the years, we have become increasingly aware of what children really need from early care and education and school-age care experiences to optimally develop, stay safe and healthy, and learn in order to be ready for and succeed in school. Also, as stated above, *Delacare: Requirements for Day Care Centers* were previously adopted in 1988. Currently this makes Delaware's Day Care Center rules the oldest in the United States. All other States have Day Care Center rules that have been revised or readopted sooner than 1988.

The proposed changes are available for review (see the "Registrar of Regulations" version) on the Office of Child Care Licensing's website at <http://www.state.de.us/kids/occl/occl.shtml>

Written comments or emails on the rule changes will be accepted until September 22, 2006 and should be addressed to the **Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, DE 19805, Attention: Lynn Jezyk, Rule Development Manager** or emailed to [lynn.jezyk@state.de.us](mailto:lynn.jezyk@state.de.us). Comments will also be heard at public hearings scheduled as follows:

## Public Hearing Schedule

- Monday, September 11, 2006, 7:00PM to 9:00P at Newark United Methodist Church, 69 E. Main Street, Newark, DE 19711 (parking in the back of church)
- Wednesday, September 13, 2006, 7:00PM to 9:00PM at Stockley Center, All Stars Building, 26351 Patriot's Way, Georgetown, DE 19947
- Monday, September 19, 2006, 7:00PM to 9:00PM at Zion Lutheran Church, 2101 Lancaster Pike, Wilmington, DE 19805
- Thursday, September 21, 2006, 7:00PM to 9:00PM at Department of Natural Resources (DNREC) Auditorium, 89 Kings Highway, Dover, DE 19901

For information on cancellations of the Public Hearings due to bad weather or an unforeseen event, please check the Office of Child Care Licensing website, <http://www.state.de.us/kids/occl/occl.shtml> or call the Office of Child Care Licensing in Wilmington, 892-5800 or in Dover, 739-5487 or listen to your local radio station.

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**500 Board of Podiatry**  
**NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to Title 29, Chapter 101 and Title 24, Section 506(a)(1) of the **Delaware Code**, the State Board of Podiatry proposes changes to its Regulations 5.0 and 6.0 relating to In-Training licensure and online license renewal. Specifically, the changes to Regulation **5.0 Licenses (Renewal, Inactive, Temporary)** provide for the new In-Training license in Title 24, Section 513(d) of the **Delaware Code** created by Senate Bill 32 and signed into law on February 1, 2006. The changes to Regulation **6.0 Continuing Education** provide for the online renewal of licenses, including the attestation of completion of continuing education requirements by licensees and the post-renewal random audit of licensees by the Board to check the veracity of attestations. Regulation **5.2.4** was created in relation to online renewal. Other grammatical, typographic, or stylistic changes are also included.

A public hearing will be held on the proposed regulations on Thursday, September 21, 2006 at 5 p.m. in the 2<sup>nd</sup> floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Board in care of Sherry Clark at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sherry Clark at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2500 Board of Pharmacy**  
**NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to Title 29, Chapter 101 and Title 24, Section 2509 of the **Delaware Code**, the State Board of Pharmacy proposes changes to its regulations affecting the licensure of wholesale distributors. The proposed changes to **8.0 Requirements for Obtaining a Permit to Distribute Drugs on a Wholesale Basis** were prompted by recent changes in the National Association of Boards of Pharmacy's Model Rules for the Licensure of Wholesale Distributors (Model Rules). The proposed changes incorporate some but not all of the changes to the Model Rules. A few minor grammatical, typographic, or stylistic changes are also included.

A public hearing will be held on the proposed regulations on Wednesday, September 20, 2006 at 9:30 a.m. in the 2<sup>nd</sup> floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments

should be submitted to the Board in care of Mariah Krass at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Mariah Krass at the above address or by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**2600 Delaware Examining Board of Physical Therapists and Athletic Trainers**  
**NOTICE OF PUBLIC HEARING**

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 **Del.C.** §2604(a)(1) has proposed changes to its rules and regulations to allow for online renewal of licenses and online attestation of completion of continuing education units. The proposed changes also revise the Mandatory Continuing Education Unit ("CEU") deadline and the license renewal deadline to correspond, so that CEU's must be completed before January 31 of any odd numbered year, the same date that licenses are renewed. Furthermore, the proposed revisions allow for flexibility in changing Board-approved independent agencies that may evaluate the credentials of foreign trained applicants by removing the names and addresses of those agencies from the regulations. Finally, the proposed changes revise Regulation 11.0 to correct a typographical error and to clarify that any applicant previously licensed in the State of Delaware who has allowed his or her license to lapse must complete 3.0 required CEU's to again obtain a Delaware license.

A public hearing will be held on September 12, 2006 at 5:00 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 Examining Board of Physical Therapists and Athletic Trainers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION**  
**3000 Board of Mental Health and Chemical Dependency Professionals**  
**NOTICE OF PUBLIC HEARING**

The State Board of Mental Health and Chemical Dependency Professionals is proposing changes to its Regulations 6.0 Renewal of Licensure. The changes provide for the online renewal of licenses, including the attestation of completion of continuing education requirements by licensees and the post-renewal random audit of licensees by the Board to check the veracity of attestations. Other grammatical, typographic, or stylistic changes are also included.

A public hearing will be held at noon on September 27, 2006 in the 2nd 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 State 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 regulations at its regularly scheduled meeting following the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
3900 Delaware Board of Clinical Social Work Examiners  
NOTICE OF PUBLIC HEARING**

The Delaware Board of Clinical Social Work Examiners in accordance with 24 **Del.C.** §3906(a)(1) has proposed changes to its rules and regulations. The proposal amends Board Regulation 5.0: *Application and Examination*; Board Regulation 6.0: *Renewal*; Board Regulation 7.0: *Continuing Education*; Board Regulation 8.0: *Inactive Status*; and Board Regulation 11.0: *Crimes Substantially Related to the Practice of Social Work*. The regulations as amended would allow licensees the ability to renew their licenses online. In connection with the Board's decision to move to online renewal, the regulations change the time period for earning CE credits to be concurrent with the biennial licensing periods and change the time frame for the Board's audit of continuing education to occur after the license period expires. The regulations also clarify the circumstances under which the Board will approve certain continuing education hours, and require that all grants of inactive status expire on the same date each year. The changes also correct cross-references in the regulations and revise a citation in one item on the crime list for clarification.

A public hearing will be held on September 18, 2006 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulation may obtain a copy from the Delaware Board of Accountancy, 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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**DIVISION OF PROFESSIONAL REGULATION  
4400 Delaware Manufactured Home Installation Board  
NOTICE OF PUBLIC HEARING**

The Delaware Manufactured Home Installation Board, in accordance with 24 **Del.C.** §4416(b)(1) has proposed the rules and regulations to implement the Manufactured Home Installation Act, 24 **Del.C.** §4400. A public hearing will be held on September 11, 2006 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Manufactured Home Installation Board, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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