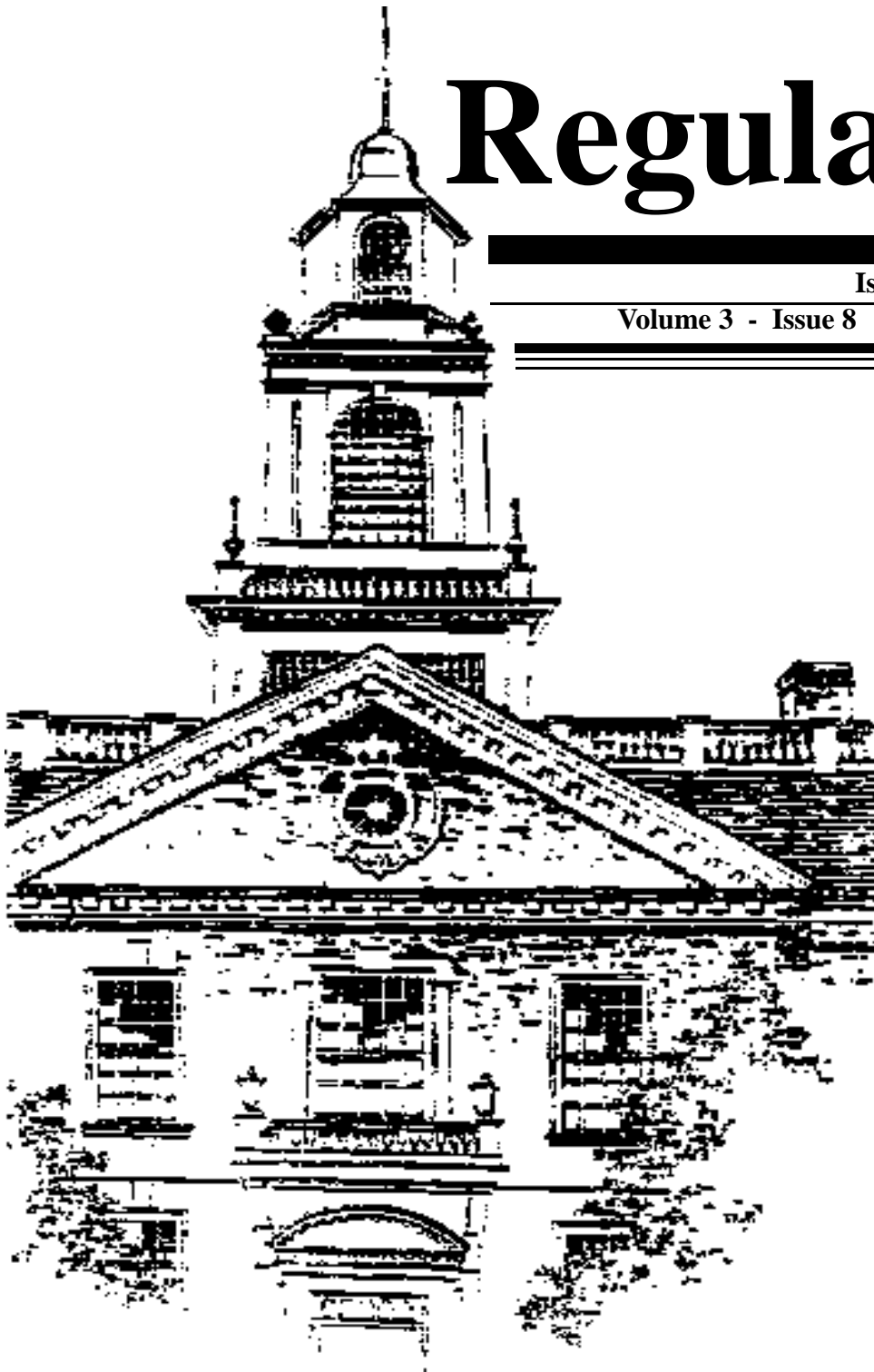


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# Delaware Register of Regulations



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Issue Date: February 1, 2000

Volume 3 - Issue 8

Pages 1007 - 1107

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- Errata
- Proposed
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- Executive Orders
- Appointments
- General Notices
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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before January 15, 2000.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

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

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

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### SUBSCRIPTION INFORMATION

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

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

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

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

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Regulation No.: 5.2111(a).0002, Mortgage Loan Brokers Minimum Requirements for Content of Books & Records..... 3 **DE Reg.** 404 (Prop.)  
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Executive Order No. 61, Declaration of Drought Warning; Extending Voluntary Water Conservation Measures; and Other Related Items..... 3 **DE Reg.** 453

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

Statutory Authority: 24 Delaware Code,  
Section 105(1) (24 **Del.C.** 105(1))

**\*PLEASE NOTE: THE MEETING TIME FOR THE PUBLIC HEARING REGARDING THE PROPOSED CHANGES TO THE BOARD OF ACCOUNTANCY RULES AND REGULATIONS WAS OMITTED FROM THE MEETING NOTICE PUBLISHED IN THE JANUARY 1, 2000 REGISTER (3 DE REG 850 (1/1/00)).**

**THE BOARD WILL MEET ON WEDNESDAY, FEBRUARY 23, 2000 AT 9:00 A.M. IN THE SECOND FLOOR CONFERENCE ROOM A OF THE CANNON BUILDING, 861 SILVER LAKE BOULEVARD, DOVER, DELAWARE, 19904.**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 105(1), the Delaware Board of Accountancy proposes to revise its rules and regulations. Please note that the following rules and regulations are a total rewriting and reordering of existing regulations, and will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in definitions of full and part time employment as it relates to the statutory experience requirement; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); establishes application requirements; requires demonstration of good character and education requirements prior to approval to sit for examination; clarifies statutory requirements and required documentation for permits to practice certified public accountancy and for certificate reciprocity; establishes reporting requirements and clarifies substantive requirements for continuing education credits; and establishes procedural rules pertaining to hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The rules and regulations have been entirely re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, February 23, 2000 at 9:00 a.m. in the Second 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 Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above

address or by calling (302) 739-4522, extension 207.

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

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

In the Matter Of:

Revision of the Regulations  
Of the Medicaid/medical  
Assistance Program

**Nature of the Proceedings:**

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to Durable Medical Equipment, General Policy, Practitioner and Pharmacy provider policies. 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 November 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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

**Findings of Fact:**

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

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective February 10, 2000.

Gregg C. Sylvester, M.D.  
Secretary

December 14, 1999

## Durable Medical Equipment Provider Manual

~~Enteral Nutrition Therapy Supplies~~~~Enteral Nutrition~~

~~“Enteral nutrition is considered reasonable and necessary for a patient with a functioning gastrointestinal tract who, due to pathology to or non-function of the structures that normally permit food to reach the digestive tract, cannot maintain weight and strength commensurate with his or her general condition. Enteral nutrition may be given by nasogastric, jejunostomy, or gastrostomy tubes, and can be provided safely and effectively in the home by nonprofessional persons who have undergone special training”. (Medicare’s National Level II Codes, 1999) is the administration into the gastro-intestinal tract of calories, nitrogen and/or other nutrients to achieve tissue synthesis and anabolism for patients requiring medically prescribed defined formula and liquid diets. The DMAP covers enteral nutrition therapy supplies when the patient has a malfunctioning or non-functioning gastro-intestinal tract, or medical condition where oral feeding is contraindicated. Patients who can obtain nutrition orally will not be approved for these supplies, with the following exceptions:~~

- ~~• Individuals with birth defects, cerebral palsy, cystic fibrosis, metabolic diseases, or other medical conditions which prevent them from obtaining sufficient nutrition from a normal diet.~~
- ~~• pregnant women with phenylketonuria (PKU).~~
- ~~• failure to thrive documentation must be attached that details the diagnosis of failure to thrive.~~

When submitting a request for enteral nutrition the DME provider is required to complete and attach a Certification for Food Supplementation Form to the CMN. This form must clearly document the relationship between the medical diagnosis and the need for the enteral therapy. A copy of this form may be found in APPENDIX C. It is not necessary for the practitioner to sign the Food Supplement Form.

The DMAP will reimburse for no more than a one month supply of enteral nutrients and enteral supplies for any one billing period.

If more than one nutrient in the same class is prescribed for the same period of service, these items must be combined on one line when billing. Failure to combine the items will result in a denial of the additional claims as duplicates.

The attending practitioner must certify the need for enteral therapy supplies at least every six months. In addition, any changes in prescription will require authorization with medical documentation of the need for change.

## Parenteral Nutritional Therapy Supplies

“Daily parenteral nutrition is considered reasonable and necessary for a patient with severe pathology of the alimentary tract which does not allow absorption of sufficient nutrients to maintain weight and strength commensurate with the patient’s general condition”. (Medicare’s National Level II Codes, 1999)

Total parenteral nutrition (TPN) is considered reasonable and necessary for a patient when the oral route is unavailable owing to surgery or obstruction, when oral intake is inadequate, and when peripheral infusion of nutrients cannot meet the patient’s needs.

Total parenteral nutrition (TPN) is the intravenous administration of sterile preparation of calories, nitrogens and/or other nutrients used in the diagnosis, cure, mitigation, or treatment of disease to achieve tissue synthesis and anabolism. The DMAP covers parenteral (infusion) nutritional therapy supplies for patients with conditions that cannot be managed with oral therapy and who do not need the supportive services of an in-patient setting. Items requiring a prescription (federal legend drugs) must be billed by a pharmacy provider using a National Drug Code (NDC).

When submitting a request for parenteral nutrition supplies the DME provider is required to complete the CMN utilizing appropriate Local Codes used for Infusion Therapy Supplies in Appendix A. The DME provider is also required to attach the physician’s care plan to the CMN. Items that require a prescription (federal legend drugs) must be billed by a pharmacy provider using a National Drug Code (NDC).

The DMAP will reimburse for no more than a one month supply of parenteral therapy supplies for any one billing period.

The attending practitioner must certify the need for parenteral therapy supplies at least every 6 months. In addition, any changes in prescription will require authorization with medical documentation of the need for change.

Oral Nutrition

Oral nutrition is considered reasonable and necessary for a patient who requires supplementation of their daily protein and caloric intake.

Patients who can adequately obtain nutrition orally will not be approved for nutrition therapy with the following exceptions:

- Pregnant women with phenylketonuria (PKU).
- Failure to thrive - documentation must be attached that details the diagnosis of failure to thrive.
- Individuals with birth defects, cerebral palsy, cystic fibrosis, metabolic diseases, or other medical conditions that prevent them from obtaining sufficient nutrition from a normal diet.

When submitting a request for oral nutrition the DME provider is required to complete and attach a Certification for Food Supplementation Form to the CMN. In addition, a physician's letter of medical necessity and prescription for a specific formula that includes calories per day are required when requesting authorization for oral nutritional supplement. The letter must document the primary diagnosis and any other related medical conditions that prevent the individual from obtaining sufficient nutrition from a normal diet and must include the following, as appropriate:

- Physical findings: Height, Weight and Ideal Body Weight or Body Mass Index. Explanation of weight loss with specific dates and measurements. Other physical examination findings.
- Significant laboratory data (for example, Serum Albumin)
- Discussion of any risk factors found related to undernutrition in any of the following areas: clinical features, eating habits, living environment, functional status, mental/cognitive status
- Explanation of previous related treatment measures with results

#### Intravenous Drug Therapy Supplies

Intravenous drug therapy is the administration of sterile preparations of medications and fluids. The DMAP covers intravenous drug therapy supplies when deemed medically necessary by the attending practitioner. The DME provider is required to complete the CMN utilizing appropriate Local Codes Used For Infusion Therapy Supplies in Appendix A. Items requiring a prescription (federal legend drugs) must be billed by a pharmacy provider using a National Drug Code (NDC).

### **General Policy Manual**

#### Delaware Prescription Assistance Program (DPAP)

The Delaware Prescription Assistance Program (DPAP) provides payment assistance for prescription drugs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources. The program is administered by the fiscal agent under contract with the State.

To be eligible for this program a person must:

- be a U.S. citizen or a lawfully admitted alien;
- have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses that exceed 40% of his or her annual income;
- be a resident of the State of Delaware;
- be ineligible for Medicaid prescription benefits;

- be ineligible for Nemours Health Clinic Pharmaceutical benefit;
- be ineligible for and/or not receiving a prescription drug benefit through a Medicare supplemental policy or any other third party payer prescription benefit; and
- be an individual aged 65 or over or be an individual between the ages 19 and 64 who is otherwise eligible for benefits under Title II of the Social Security Act.

Prescription drugs covered under the Program are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing DMAP limitations. Services covered are generic and brand name FDA-approved and other legal prescription drugs, as well as cost effective over-the-counter drugs prescribed by a physician. Necessary diabetic supplies not covered by Medicare will also be covered.

Payment assistance shall not exceed \$2,500 per State fiscal year to assist each eligible person in the purchase of prescription drugs. There will be a co-payment of \$5 or 25% of the cost of the prescription, whichever is greater. The pharmacy will collect the co-payment before the prescription is dispensed.

#### Services Requiring Prior Authorization

##### Pharmaceuticals

Certain pharmaceuticals require prior authorization. For further information refer to the Pharmacy or Practitioner Provider Specific Policy Manual.

##### Categorically Eligible

##### Who is Eligible

The following individuals/families may be eligible for Medicaid in Delaware as categorically eligible if they meet certain low income and resource requirements:

- Anyone who gets a benefit from Aid to Families with Dependent Children (AFDC), Aid to the Unemployed (AU), Supplemental Security Income (SSI) or State Supplemental Payments (SSP).
- People needing nursing facility care whether living in a medical facility or at home and receiving waiver services for the mentally retarded, the elderly/disabled, ~~or~~ persons with HIV/AIDS, or persons eligible for the Assisted Living Medicaid Waiver Program.

**Practitioner Provider Manual**

## Pharmacy Services

Prior Authorization Requirements for Medications

Medications may be prior authorized if one of the following issues is present:

- medical necessity is lacking or is not clearly evident;
- potential for diversions, misuse and abuse;
- high cost of care relative to similar therapies;
- experimental use opportunity; and
- drug classes where the potential for not keeping within the policy guidelines of the DMAP are identified.

The pharmacy provider or the practitioner can initiate the request for prior authorization. Requests will be evaluated within one business day by Medicaid's pharmacy consultant or medical director. If required, one 2 hour emergency supply can be dispensed until a decision is made.

The Drug Utilization Review Board will make decisions regarding the medications that will require prior authorization and the criteria to be used. Prior authorization will be based on duration of therapy, quantity, or a combination of both depending on the medication requested. Refer to Appendix M for specific criteria for prior authorization.

Drug Rebate Programs

For the Medicaid (Title XIX) population including the Diamond State Health Plan (DSHP) managed care eligibles, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates under the HCFA rebate agreement.

For the Delaware Health Children Program (DHCP), the Chronic Renal Care Program, the State Program for Non-Qualified, Non-Citizens, and the Delaware Prescription Assistance program, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to participate in the State Rebate Program.

**Pharmacy Manual**

## III. LIMITATIONS

Drug Rebate Programs

For the Medicaid (Title XIX) population including the Diamond State Health Plan (DSHP) managed care eligibles, prescription drugs are restricted to medically necessary

products manufactured by pharmaceutical companies that agree to provide manufacturer rebates under the HCFA rebate agreement.

For the Delaware Health Children Program (DHCP), the Chronic Renal Care Program, the State Program for Non-Qualified, Non-Citizens, and the Delaware Prescription Assistance program, prescription drugs are restricted to medically necessary products manufactured by pharmaceutical companies that agree to participate in the State Rebate Program.



**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ELECTRICAL EXAMINERS**  
Statutory Authority: 24 Delaware Code,  
Section 1406(a)(1) (24 Del.C. 1406(a)(1))

The Delaware Board of Electrical Examiners in accordance with 24 Del. C. Section 1406(a)(1) has proposed a comprehensive revision of its rules and regulations to implement the statutory revision that became effective July 20, 1999. The changes in part include new requirements for insurance coverage, a provision for an inactive license, requirements for continuing education, timetables for qualifications of employees of inspection agencies, clarification of licensure exceptions, proof required to substantiate required experience, reciprocity procedures, and a program for impaired professionals.

A public hearing will be held at 9:00 a.m. on March 7, 2000 in the second for conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons to submit written comments may forward these comments 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 conclusion of the public hearing

**\* PLEASE NOTE: THE PROPOSED REGULATIONS ARE A COMPLETE REWRITE OF THE EXISTING RULES & REGULATIONS, THEREFORE BOTH SETS ARE PRESENTED IN THEIR ENTIRETY.**

**EXISTING RULES & REGULATIONS  
ADOPTED 7/12/73**

~~The State Board of Electrical Examiners does hereby adopt the provisions of the current National Electrical Code, plus the amendments thereto to date. County and city codes applicable as the official rules and requirements for performance of electrical work in the State of Delaware, plus any amendments or additions to the following rules which the Board may adopt from time to time.~~

~~Rule 1. Registration required to engage in the electrical business:~~

~~No person shall hold himself out to the public as engaged in the business of installing, repairing, maintaining or erecting any kind of electrical wiring conduits, machinery, appliances, motors, fixtures, signs, electrically operated heating equipment, airconditioners, elevators or any other electrically operated apparatus, or device in or about any premises in the State of Delaware without having first obtained a Certificate of Registration as required by, or having otherwise complied with, these regulations; other than specifically exempted by Section 1.432, 1 through 8.~~

## Rule 2. Applications:

Applications may be procured in person or by mail from the office of the State Board of Electrical Examiners, each weekday during office hours except Saturdays, Sundays or legal holidays. Applications must be made in the name of the individual, not the company, for one of the following registrations:

"Master Electrician General" means any person engaged in the business of installing, erecting, repairing or contracting to install, erect or repair electric wire of conductors to be used for the transmission of electrical current for electric light, heat or power purposes, or moldings, ducts, raceways, or conduits for the reception or protection of such wires or conductors, or to electrical machinery, apparatus, devices, or fixtures to be used for electric light, heat, or power purposes, or planning, estimating, laying out, and supervising such electrical work.

"Master Electrician Limited" means any person engaged in house wiring LIMITED to not over four family dwellings. In the case of row or town houses, if there are more than four houses in one row and there is no break in the roof for a fire wall, the electrical work must be installed by a Master Electrician General. If the row or town houses have a fire wall protruding through the roof and thus dividing the houses in groups of no more than four, the electrical work may be performed by a Master Electrician Limited.

"Master Electrician, General Special", has the same requirements as for master electrician general, except that the applicant must exhibit knowledge in electrical matters relating to the applicant's specialty.

Rule 3. Every applicant must be at least 18 years of age and shall have had a minimum practical experience, or equivalent in technical training as prescribed for Master Electrician General or Master Electrician Limited.

(a) Qualifications for Master Electrician General:

Each applicant for Master Electrician General shall have had at least four years of full time or its equivalent of technical training in a technical school or college, plus two years of full time practical experience.

(b) Qualifications for Master Electrician Limited:

Each applicant for Master Electrician Limited, shall have had at least two years of full time practical training or its equivalent of technical training in a technical school or college, plus one year of full time practical experience.

(c) Qualifications for Master Electrician General Special:

Must have the same requirements as for Master Electrician General, except that the applicant must exhibit knowledge in electrical matters relating to the applicant's specialty.

(d) Qualifications for Master Electrician Limited Special:

Must have the same requirements as for Master

Electrician Limited, except that the applicant must exhibit knowledge in electrical matters relating to the applicant's specialty.

## Rule 4. Examinations.

Examinations shall consist of a knowledge of the current National Electrical Code and a general knowledge of electrical work as prescribed by this law.

(a) Applicants for examination will be required to obtain a grade of at least 75% in order to obtain a Certificate of Registration.

(b) Applicants who fail to obtain a grade of at least 75% on an examination shall be re-examined within 90 days thereafter; applicants who fail two consecutive examinations with a grade of less than 50% will be required to wait a period of one year before being permitted to take the examination again.

(c) Any person found referring to notes or books, other than the National Electrical Code book, or misbehaving during any examination will be barred from that examination and must wait at least six months for re-examination.

(d) Any person aggrieved by any decision of the Board on any question relating to examinations, may be given a hearing before the Board, provided request is made in writing to the Secretary/Treasurer of the Board within thirty days of notice of said decision. Said decision of the Board regarding any person, shall be mailed to the aggrieved and copies of the decisions kept on file at the office of the State Board of Electrical Examiners.

(e) All requests for rulings by the Board shall be submitted in writing to the Secretary/Treasurer.

(f) Examinations shall be held as required in the presence of at least two members of the State Board of Electrical Examiners. All examinations will be reviewed by the Board at their next regular board meeting.

(g) Applicants will be notified by mail of the examination results within thirty days.

## Rule 5. Fees and Bond

(a) The registration fee for Master Electrician General, Master Electrician General Special, Master Electrician Limited and Master Electrician Limited special, shall be set by the Director, Division of Professional Regulation. Ten dollars of the required fee shall accompany the application, the remainder to be paid upon notification that the applicant has passed the required examination. The initial \$10.00 fee deposit shall be retained as an application fee. The Board shall not be responsible for cash sent through the mail.

(b) Before any Certificate of Registration will be issued, the applicant must furnish a good and sufficient bond, meeting with the approval of the Board, in the name of the State of Delaware, in the amount of \$1,000.00 conditioned upon the faithful performance of any or all work entered upon or contracted for, and to save harmless the

owner or real party in interest in the property for which any material is furnished for services performed by the applicant, against loss, damage and injury resulting through want of skill or negligence on the part of the applicant, his agents, or employees, provided action is maintained thereon by such owner or real party in interest within one year from the date of installation of materials furnished or performance of such work or service, and provided that the aggregate liability of the surety for all such loss, damage, or injury shall in event exceed the sum of such bond.

**Rule 6. Certificate of Registration:**

All Certificates of Registration, when received from the Board, must be displayed in a prominent place in the principal office or establishment of Certificate holder.

(a) No registration shall be transferable under penalty of revocation.

(b) Each registration shall be issued for the State fiscal year during which it is issued and the full fee shall be payable irrespective of the state of issue.

(c) All persons receiving a Certificate of Registration shall display, on the vehicles used in the performance of their work, the words, "Registered Electrician" and the number assigned to them in not less than three inch letters and numbers.

**Rule 7. Expirations and Renewals:**

(a) Certificates of Registration shall expire on the last day of the month of June on alternate years. Master Electrician General and Master Electrician General Special certificates expire on June 30th of even years, i.e., 1986, 1988, 1990, 1992, etc. Master Electrician Limited and Master Electrician Limited Special certificates expire on June 30th of odd years, i.e., 1987, 1989, 1991, 1993, etc. Certificates shall become invalid on that day unless renewed.

(b) Renewal may be effective any time during the month of June, by payment of the biennial fee which shall be set by the Director, Division of Professional Regulation. The failure on the part of any registrant to renew his Certificate biennially in the month of June, as required, shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a Certificate after the month of June shall include a late charge of \$1.00 plus \$1.00 each month or fraction of the month that payment of renewal fee is delayed.

If an applicant has not renewed his registration within a 36 month period, such registration is automatically canceled and he must reapply as a new applicant.

Before any Certificate of Registration will be issued to an approved applicant, the applicant shall pay a fee as set by the Director, Division of Professional Regulation to the State Board of Electrical Examiners.

When a registered holder does not do electrical work, he may pay only his fee and late charges, if there are

any. It is not necessary to renew the bond, as long as he is not engaged in the electrical contracting business.

(e) Continuing Education (Adopted March 23, 1988 Public Hearing)

Every registrant shall accrue (10) ten hours of approved continuing education per renewal period. Written proof of ten (10) hours of approved continuing education shall be submitted biennially during the month of June along with payment of the renewal fee. Continuing education accruals in excess of 10 hours will not be carried over and credited toward the next year's required accrual of continuing education hours.

**Rule 8. Revocation of Certificate of Registration:**

(a) The Board may revoke the Certificate of Registration of any registrant that is found guilty of:

(1) The practice of any fraud or deceit in obtaining a Certificate of Registration.

(2) Any gross negligence, incompetency, or misconduct in supplying material or performing services as An electrical contractor.

(3) Permitting or causing defective electrical work, if done deliberately or if not corrected within 15 days, or longer if necessary, at the discretion of the Board following notice thereof.

(a) Any person may prefer charges of fraud, deceit, gross negligence or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the Secretary/Treasurer of the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been preferred.

(c) The time and place for the hearing shall be fixed by the Board, and a copy of the charges, together with a notice of the time and place for hearing, shall be personally served on or mailed to the last know address of the registrant, at least 15 days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel to cross-examine witness appearing against him and to produce evidence and witness in his own defense. If, after such hearing, four or more members of the Board vote in favor of finding the accused guilty, the Board may revoke the Certificate of Registration of such registrant.

(4) Loses or has the bond required in sub-section 1424 canceled.

(5) Is found guilty of using the certificate of registration or allowing the certificate of registration to be used for any work that the registrant has not directly supervised as a full time employee or owner of the company that performed the work.

(6) Uses or attempts to use a certificate number for

which the registrant is not entitled.

(b) Procedure for Revocation

First Offense: A letter of reprimand and/or a temporary revocation of the certificate of registration up to seven days.

Second Offense: A temporary revocation of certificate of registration up to thirty days. Third Offense: Certificate of registration may be revoked.

(c) Electrical Work by Non-holder of Certificate of Registration: False Representation:

(1) No person not the holder of a Certificate of Registration, shall install, alter or repair any wiring or appliances for electric light, heat, or power in or on any building, and no person not the holder of such registration, unless employed by and working under the supervision of a person holding a registration as defined herein, shall use in any advertising the words "Master Electrician" or the words "Registered Electrician" or the words "Electrical Contractor", or any words of the similar meaning or import on any sign, card, letterhead, or in any other manner, except as noted under Section 1432(a)(1)-(6).

(d) False Statement:

Any person who, with intent to defraud or deceive, knowingly makes a false statement in an application for certificate of electrical inspection and approval or in any application provided for in this title or in any proof or instrument in writing in connection therewith, or who shall in an examination hereunder, deceive or substitute, shall be in violation of this regulation.

**Rule 9. Annual Inspection:**

(a) All persons, firms, or corporations that are exempt under Section 1432(2) and Section 1432(6) provisions of this law from having a Registered Master Electrician, shall keep a record for the electrical inspection authority of all additional equipment or alterations to the existing electrical system. An applicant listing all changes and additions shall be filed with the authorized inspection agency recognized by the Board.

(b) In lieu of keeping such records, all persons, firms or corporations may file application for each change or additions at the time of completion or must request an annual inspection each year of their complete electrical installation.

(c) All the above applications shall be sent to an authorized inspection agency recognized by this Board.

The following is the Board's ruling on how to comply with Section 1432(6);

1. Have in your employment a Registered Electrician, this electrician must file on all electrical installations that he performs and/or supervises. This electrician must be registered with the Delaware State Board of Electrical Examiners. Any electrical installation performed by a registered electrician must be inspected upon completion.

2. Have in your employment a Professional Engineer with ten years experience in electrical planning and design, who is responsible for and supervises the plant's electrical installations. This engineer must be registered with the Delaware State Board of Electrical Examiners and the Delaware State Board of Electrical Examiners and the Delaware Association of Professional Engineers. If a plant employs a Professional Engineer, all new installations performed during the year must be inspected on an annual basis.

**Electrical Inspection Procedures and Regulations for Industrial Plants:**

The following procedures and regulations are set forth by the Delaware State Board of Electrical Examiners as requirements of Delaware Licensed Electrical Inspection Agencies when conducting an annual inspection of Industrial Plants.

Title 24, Chapter 14, Subsection 4321(6), paragraph (c) of the Delaware Code, requires all Manufacturing and Industrial establishments to have all electrical work inspected at least once annually.

**Work Qualified for Annual Inspections:**

All electrical installation in manufacturing and industrial facilities, performed by Owner's employees or by a properly registered and licensed Delaware Electrical Contractor, which have been inspected by a Registered Professional Engineer meeting the qualifications of Subsection 1432, paragraph (6) qualify for annual inspection. This work must be inspected and inspection must be requested by the Owner's authorized Engineer.

Where an Owner contracts electrical work with a Contractor who is not properly licensed or does not have in his employ an electrician registered in the State of Delaware, said Contractor is in violation and is subject to legal action and work can be stopped until compliance with the law.

**Work Not Qualified for Annual Inspection:**

All electrical installations performed by the Owner's employees, under the supervision of an electrician registered in the State of Delaware or by an Electrical Contractor properly licensed and registered in the State of Delaware, must be inspected as required in Subsection 1433, paragraph (b), with the exception of work inspected by a Professional Engineer pursuant to Subsection 1432, paragraph 6.

**Industrial Qualifications:**

1. For industrial facilities that have in their employ a full time, qualified electrical maintenance force and/or experience engineering staff, inspections will be conducted on a sample or random basis. A representative sample of each type of electrical work will be inspected. If no

serious violations are found and it can be safely assumed that the uninspected work will be of the same quality, a letter of approval can be issued for all work subject to inspection. Plant personnel will be responsible to check for and correct on the uninspected work, any violations cited on the inspected work.

2. On industrial facilities that do not have qualified electrical maintenance personnel, inspections will be conducted on a more thorough basis. A larger percentage of work will be inspected and if necessary on small facilities, all work may be inspected until the inspector is satisfied that all work conforms to the National Electrical Code.

**Procedures:**

1. Owner submits written "Application for Electrical Inspection". This may be initiated by telephone and if requested, inspector will assist Owner in completing written application.

2. Prior to inspector's visit, Owner's representative will prepare a list of all electrical work performed during the past year, that had not been previously inspected.

\*If the qualifications are questionable, the inspector will refer the case to the State Board.

3. Inspector contacts plant and arranges mutually suitable date for inspection.

4. Inspector is accompanied by qualified plant personnel, who will assist in locating work to be inspected. Inspector has the authority to choose and be shown those installations that he feels have the highest safety priorities.

5. The inspection will be based on the National Electrical Code. He will also report any deteriorated, damaged or abused installations that are a safety hazard.

6. Inspection agency will file report within two weeks. Report will cite all violations and refer to appropriate sections of the National Electrical Code. A reasonable time will be indicated for plant to make corrections.

7. Plant must make corrections within scheduled time and notify the inspection agency for reinspection. If additional time is needed, industry must notify in writing, with a copy to the State Board of Electrical Examiners, the cause for delay and request a reasonable extension. The Board will exercise its authority to take legal action if adequate effort is not made to correct violations.

**Regulations:**

Inspection Agencies shall adhere to the following regulations:

1. Has authority to inspect only those installations covered by the National Electrical Code or Title 24 of the Delaware Code.

2. Shall at all times adhere to plant's safety, sanitation and security regulations.

3. Shall not involve himself in trivia that is not pertinent to the National Electrical Code.

4. If required, sign a non-disclosure agreement to which he legally binds himself and the agency which he represents.

5. Will not interfere with the plant's normal production procedure. If necessary to shutdown or de-energize production related equipment, he will schedule this at the earliest convenience of the plant's representative to minimize or avoid loss of production.

6. Will be expedient and attempt to conduct a thorough and impartial inspection as quickly as possible.

7. Inspection agency will invoice the industry at an hourly rate (rates subject to Board approval), with a minimum two hour billing. Invoice will include time for:

a. On site inspections.

b. Travel time.

c. Reinspection.

d. Report writing.

e. Letter of Approval with copy to the State Board.

f. Reviewing and/or advising industrial client as to reason for violations or possible corrective action. Invoice will be for inspectors or supervisors time only and will not include clerical or secretarial services.

**Appeal:**

Industry has at all times the right to appeal the action of the inspection agency and its personnel to the State Board. Prior to notifying the Board, problems should be brought to the attention of the District's Manager of the Inspection Agency.

**Rule 10. Reciprocity:**

The Board may, upon application therefore, and the payment of the regular fee and without examination, issue a Certificate of Registration as a Master Electrician General and Master Electrician General Special to any person who holds a certificate of qualification or registration issued to him by the proper authorities of any State or Territory or District of the United States, or of any country, provided that the requirements for the registration of electrical contractors, General or Limited, under which such certificate of qualification or registration was issued do not conflict with the provision of this chapter and are of a standard not lower than that specified in this chapter, provided the same rights are given to the electrical contractors of this State.

**General Rules:**

1. All electrical work installed by any registrant shall be installed in accordance with the rules and regulations of the National Electrical Code, the local light and power company and all state, city and county building codes.

2. All electrical work, appliances or any related

installations shall be installed in a work man like manner.

3. The State Board of Electrical Examiners shall have the authority to appoint representatives (other than board members) from various specialized fields to investigate written complaints which, in the opinion of the Board, warrants investigation; however, these representatives shall act only in an advisory capacity and all opinions and decisions shall be formulated or made by the State Board of Electrical Examiners.

4. It is resolved that the original Rules and Regulations for the general supervision and control of the electrical business in the State of Delaware were Adopted October 1, 1974.

The following were added to the General Rules already submitted by the State Board of Electrical Examiners.

5. All applications for electrical inspection must be signed by the registration holder. These applications are not to be accepted if the registrant's name and registration number are typed or stamped on the application.

6. The State Board of Electrical Examiners is to be notified by the registration holder within ten (10) days, if the registrant terminates employment with a company or changes the name of his company or corporation. This notification is to be in writing to the Board office.

7. Any person holding an electrical registration with the State Board of Electrical Examiners, upon becoming an electrical inspector, shall have his registration suspended until such time as he is no longer affiliate with the inspection agency. A late fee will not be charged by the Board during the time of suspension.

8. All new inspectors hired by recognized inspection agencies may be required to take a written examination within ninety (90) days after being hired.

9. In the case of one registered contractor taking over and completing a job started by another contractor, the following procedure is to be followed:

1) The contractor leaving the job must obtain a final electrical approval on the work he has installed.

2) The contractor completing the job must file a letter with the Board office stating that he is assuming complete responsibility for the completion of the job and obtaining the necessary electrical inspections and approval on same.

10. Joint Venture: The Board has deemed joint ventures acceptable provided that all parties involved are registered with the State Board of Electrical Examiners as Electrical Contractors.

11. The following is the procedure for processing service changes:

1) Electrical contractor to pick up the meter socket and jumper bars after the meter inspector has been consulted.

2) Upon completion of work (some maximum

period) the electrical contractor is to make temporary connections, install jumpers, apply for inspection and advise the meter department.

3) If final inspection agency approval is not received in fifteen (15) days, the State Board of Electrical Examiners is to be informed.

## PROPOSED RULES AND REGULATIONS

### 1.0 License required.

1.1 No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 Del.C. § 1407, 1419

1.2 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.

1.3 A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

### 2.0 Applications.

2.1 Applications may be obtained in person during regular business hours or by mail from the Division of Professional Regulation, Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467. Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.

2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

2.3 Applications approved for testing will be valid for two years. If the test isn't taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

### 3.0 Qualifications.

3.1 Persons demonstrating the education and experience qualifications set forth in 24 Del. C. § 1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.

3.2 An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires either an employer's

affidavit, a tax form w-2, or tax Schedule C. The required experience and training must be completed prior to taking the licensure test

#### 4.0 Examinations.

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners will attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

#### 5.0 Fees

5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904 -2467.

#### 6.0 License and Insurance.

6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.

6.2 Each licensee shall maintain general liability insurance of at least \$300,000.00. Proof of said insurance shall be submitted at the time of license issuance and each renewal.

#### 7.0 Expiration and Renewal.

7.1 All licenses as master electrician or master electrician special expire on June 30, 2000 and even - numbered years thereafter. All licenses as limited electrician or limited electrician special expire on June 30, 2001 and odd - numbered years thereafter.

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is lapsed when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate a lapsed license within one year of the date the renewal application was due by meeting all requirements and paying

an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division. Said license may be reactivated by the Board upon written request which includes evidence of 10 hours of continuing education completed within the preceding 2 years, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of lapse or inactive status.

#### 8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board by April 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.

8.2 Sponsors or licensees seeking pre-approval of CE hours should submit the request on a form approved by the Board at least 60 days before the CE course is being offered.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

#### 9.0 Loss of license holder

9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 Del. C. § 1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.

9.2 The notification must include documentation of the business relationship with the former license holder.

#### 10.0 Exceptions.

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;

10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;

10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;

10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices

10.1.5 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;

10.1.6 persons performing the work of any light or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of attachment, termination box, or d-mark;

10.1.7 a homeowner who has obtained a homeowner's permit provided by law.

#### 11.0 Reciprocity

11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements. If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice can be by an employer's affidavit, tax form w-2, or tax Schedule C

#### 12.0 Required Inspection.

12.1 Every licensee shall file for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall complete the inspections no later than five working days after the application has been received.

12.2 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

12.3 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a Board-

approved inspection agency for new installations.

12.4 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection by a Board-approved inspection agency.

#### 13.0 Organization of the Board

##### 13.1 ELECTION OF OFFICERS

Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1-August 31.

##### 13.2 DUTIES OF THE OFFICERS

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a professional member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 Del.C. §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

##### 13.3 MEETING MINUTES

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

#### 14.0 Homeowners Permits

14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. Generally homeowner's permits are not required for replacement in kind but are required for new construction, renovation, and any work that requires a building permit.

14.2 A homeowner shall not be permitted to install a hot tub or a swimming pool.

#### 15.0 Inspection agencies

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 Del. C. § 1421 in order to operate



in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation.

15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.

15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.

#### 16.0 Voluntary treatment option for chemically dependent or impaired professionals

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 Del. C. § 8807 (n) who are reported to the Board or Division using the following procedures:

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

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

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

16.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or

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

16.5 Failure to cooperate fully with the Board president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option and the Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h), § 8807 of title 29.

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

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

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

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

16.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment

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

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

16.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

16.8 The Board's president, his/her designate or designates or the 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.

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

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

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

16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF MASSAGE AND BODYWORK**

Statutory Authority: Title 24, Delaware Code,  
Chapter 53 (24 Del.C. Chp. 53)

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 5306(1), the Delaware Board of Massage and Bodywork proposes to revise its rules and regulations. The proposed revisions define certain modalities as constituting or not constituting the "practice of massage and bodywork." The Board's Rule regarding Continuing Education has also been rewritten in its entirety, changing the number of required hours for massage therapists from 12 to 24 per biennial licensing period; clarifying content requirements and Board approval procedures; allowing credit for certain self-directed activities; establishing reporting requirements, and allowing for hardship extensions in certain cases.

A public hearing will be held on the proposed Rules and Regulations on Thursday, March 2, 2000 at 2:00 p.m. in the Second 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 Rules and Regulations. Any written comments should be submitted to the Board in care of Denise Spear at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Denise Spear at the above address or by calling (302) 739-4522.

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

**Board of Massage and Bodywork Rules and Regulations**

1.0 Definitions and General Definitions.

1.1 The term "500 hours of supervised in-class study" as referenced in 24 Del.C. Section 5308(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in Section 5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 Del.C. Section 5309(a)(1) shall mean that an instructor has controlled and

reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork.

1.3 The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

Acupressure  
Chair Massage  
Craniosacral Therapy  
Deep Tissue Massage Therapy  
Healing Touch  
Joint Mobilization  
Lymph Drainage Therapy  
Manual Lymphatic Drainage  
Massage Therapy  
Myofascial Release Therapy  
Neuromuscular Therapy  
Orthobionomy  
Process Acupressure  
Reflexology  
Rolfing  
Shiatsu  
Swedish Massage Therapy  
Trager  
Visceral Manipulation

The practice of the following modalities does not constitute the "practice of massage and bodywork":

Alexander Technique  
Aroma therapy  
Feldenkrais  
Hellerwork  
Polarity Therapy  
Reiki  
Shamanic Technique  
Therapeutic Touch

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist.

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** Section 5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** Section 5311.

2.2 In addition to the application and materials described in paragraph "a" of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork

where the applicant completed the hours of study required by 24 **Del.C.** Section 5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in paragraphs "a" and "b" of this Rule are submitted to the Board's office.

3.0 Examination.

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

4.0 Application for Certification as Massage Technician.

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate ~~form~~ from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** Section ~~5308(3)~~ 5309(a)(2) ; and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** Section 5311.

*Summary: This amendment corrects a typographical error and an error in citation in the current rule 4(a). This is a non-substantive amendment. 29 Del. C. §10113(b)(4).*

4.2 In addition to the application and materials described in paragraph "a" of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** Section 5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in paragraphs "a" and "b" of this Rule are submitted to the Board's office.

5.0 Expired License or Certificate.

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated

within ninety (90) days after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation.

#### 6.0 Continuing Education.

~~6.1 As a precedent setting condition to the renewal of the two year license or certification, a massage/bodywork therapist or massage technician must complete twelve hours of study in the field of massage/bodywork practice during the two year period immediately preceding renewal; provided however, that if the massage/bodywork therapist or massage technician has been licensed or certified one year or less on the date of renewal, the requirement for continuing education shall be pro-rated as follows:~~

~~— Licensed or certified less than six months at date of renewal; zero (0) hours;~~

~~— Licensed or certified six — twelve months at date of renewal; six (6) credit hours.~~

~~6.2 Continuing education may include, but is not limited to conferences, seminars and classes. Renewal of licensure or certification is contingent upon approval of continuing education courses by the Board.~~

~~(Continuing Education Adopted March 26, 1996).~~

6.1 Hours required. For license or certification periods beginning September 1, 2000 and thereafter, each massage/bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

6.2 Proration. Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

#### 6.3 Content.

6.3.1 Except as provided in Rule 6(c)(2), continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than 25% of the continuing education hours required in any licensing period may be earned in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

#### 6.4 Board approval.

6.4.1 "Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6(c) and offered or approved by the following organizations:

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 Self-directed activity:The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. 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.

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour

course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6(c)(2).

**6.5 Reporting.**

**6.5.1** For license or certification periods beginning September 1, 2000 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

**6.5.2** If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

**6.5.3** If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6(d)(2) and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

**6.6 Hardship.** A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" 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 or certification period for which it is made. 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. The licensee may not practice until reinstatement of the license.

**7.0 Scope of Practice.**

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

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**DEPARTMENT OF AGRICULTURE****PESTICIDE SECTION**

Statutory Authority: 3 Delaware Code,  
Chapter 12 (3 Del.C. Ch. 12)

The Delaware Department of Agriculture, Pesticides Section, is proposing to amend the Delaware Pesticide Rules and Regulations, Revised, February 10, 1999. 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 Grier Stayton, Department of Agriculture, 2320 S. duPont Highway, Dover, DE 19901 by March 1, 2000. The proposed revisions of Sections 4, Registration, and Section 5, Licensing are the consequence of changes to 3 Del.C. Chapter 12, Pesticide Law, made during the 140th General Assembly session. Amendments to Section 4 Reigistration will provide for a biennial pesticide product registration period and a fee increase. Amendments to Section 5, Licensing, will require a pesticide business license applicant or holder of the license to employ a certified applicator with a minimum of two years practical experience pursuant to §1207(c)(1) of the Law. Section 5 amendments also provide for the option of a one or two year license period.

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

H. Grier Stayton  
Pesticides Administrator

**Delaware Pesticide Rules & Regulations****Section 1 General****1.01 Scope**

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

**1.02 Authority**

These regulations are issued under the authority of Title 3 Part II Chapter 12 of the Annotated Code of Delaware.

**1.03 Effective Date**

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

**1.04 Filing Date**

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

## Section 2 Declaration of Policy

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

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

## Section 3 Definitions

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise. All terms defined by the Delaware Pesticides Law (3 **Del.C.**, Part II, Chapter 12) are hereby incorporated by reference in this regulation.

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

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

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

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

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

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

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

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

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating, irreversible

illness or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed in Section 261.31, 261.32 and 261.33 of the State of Delaware Hazardous Waste Regulations and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the State of Delaware Hazardous Waste Regulations.

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

“Regulated pest” means a specific organism considered by the state or by a Federal Agency to be a pest requiring regulatory restrictions, regulations or control procedures in order to protect man or the environment.

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

## Section 4 Registration

### 4.01 Product Registration

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

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

- (1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's.
- (2) The name of the pesticide.
- (3) Other necessary information required for completion of the Department's application for registration form.
- (4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use.
- (5) The use classification as provided in the "Federal Insecticide, Fungicide and Rodenticide Act", as amended.
- (6) The EPA product registration number.

(c) The applicant desiring to register a pesticide shall pay ~~an annual registration fee of twenty five dollars (\$25.00)~~ a biennial registration fee of seventy dollars (\$70.00) to the Delaware Department of Agriculture for each

brand or grade of pesticide to be registered for such applicant. All ~~such~~ registrations shall ~~expire on June 30 of any one year~~ continue in effect until June 30 of the year in which they expire. Applications received between January 1 and June 30 shall be registered for the upcoming two year period Applications received between July 1 and December 31 will be registered for a two year period beginning July 1 of the year in which the application was received.

(d) Any registration approved by the Secretary and in effect on June 30, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until suspended, or otherwise denied in accordance with the provisions of Section 1205 of ~~this law~~ the Law. Forms for registration shall be mailed to registrants at least forty-five days prior to the due date.

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

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

#### 4.02 Employee Registration

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

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

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

- (i) Pesticide Law and Regulations;
- (ii) Label comprehension;
- (iii) Safety and emergency procedures;
- (iv) Proper pesticide handling, storage and disposal;
- (v) Pest identification and control procedures;
- (vi) Pesticide application techniques;

(vii) Environmental and health concerns;  
and  
(viii) Integrated pest management principles

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

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

(d) Written notification of employment termination of this registered employee with the licensee shall be made to the Department within 30 days subsequent to termination.

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

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

#### Section 5 Licensing

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

~~5.01~~ 5.02 All business licensee applicants shall pay an annual fee of \$50.00, or a biennial fee of \$100.00.

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

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

~~5.02~~ 5.05 All pest control business license numbers shall appear on all service vehicles used by persons holding a commercial pesticide applicators license ~~excluding~~ except: 7.01(a) Agriculture Plant Pest Control; 7.01(b) Agriculture Animal Pest Control; 7.02 Forest Pest Control; 7.04 Seed Treatment; 7.05 Aquatic Pest Control; 7.08 Public Health Pest Control; 7.09 Regulatory Pest Control; 7.10 Demonstration and Research Pest Control. The license number shall be in bold readable numbers not less than 2 inches or more than 6 inches high. The full name of the business licensee shall be displayed on the vehicle.

**Section 6 Restricted Use Pesticides Classification**

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

**Section 7 Categorization of Commercial Applicators**

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

**7.01 Agricultural Pest Control Category**

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

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

(c) Fumigation of Soil and Agricultural Products - This subcategory includes commercial applicators using or supervising the use of pesticides for soil fumigation in the production of an agricultural commodity and/or for fumigation of agricultural products in storage or transit.

**7.02 Forest Pest Control Category**

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

**7.03 Ornamental and Turf Pest Control Category**

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

**7.04 Seed Treatment Category**

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

**7.05 Aquatic Pest Control Category**

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

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

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

**7.06 Right-of-Way Pest Control Category**

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

**7.07 Industrial, Institutional, Structural and Health Related Pest Control Category**

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

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

(b) Wood Destroying Pest Control - This subcategory includes commercial applicators using or supervising the use of pesticides, other than fumigants, in or around structures for the prevention, suppression, or control of wood destroying organisms.

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

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

(e) Institutional and Maintenance Pest Control - Except as otherwise provided in these regulations, this subcategory includes any individual using pesticides on a



property they own, or are employed or otherwise engaged to maintain, including but not limited to janitors, general maintenance personnel, sanitation personnel, and grounds maintenance personnel. This subcategory does not include private applicators as defined in Section 9 below, individuals who use anti-microbial pesticides, or individuals who use pesticides which are not classified as "restricted use pesticides" in or around their dwelling.

(f) Cooling Tower Pest Control - This subcategory includes commercial applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

(g) Miscellaneous Pest Control - This subcategory includes commercial applicators using or supervising the use of pesticides in a category not previously covered in these regulations.

#### 7.08 Public Health Pest Control Category

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

#### 7.09 Regulatory Pest Control Category

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

#### 7.10 Demonstration and Research Pest Control Category

This category includes:

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

(b) Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. The second group includes State, Federal, commercial and other persons conducting field research when utilizing pesticides.

### Section 8 Standards for Certification of Commercial Applicators

#### 8.01 Determination of Competency

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

administered as closed book examinations.

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

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

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

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

#### 8.02 General Standards for All Categories of Certified Commercial Applicators

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

##### (a) Label & Labeling Comprehension

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

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

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

##### (b) Safety

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

(2) Common types and causes of pesticides accidents;

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

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

(5) Symptoms of pesticide poisoning;

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

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

##### (c) Environment

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

- (1) Weather and other climatic conditions;
- (2) Types of terrain, soil or other substrate;
- (3) Presence of fish, wildlife and other non-target organisms; and
- (4) Drainage patterns.
- (d) Pests
  - Factors such as:
    - (1) Common features of pest organism and characteristics of damage needed for pest recognition;
    - (2) Recognition of relevant pests; and
    - (3) Pest development and biology as it may be relevant to problem identification and control.
- (e) Pesticides
  - Factors such as:
    - (1) Types of pesticides;
    - (2) Types of formulations;
    - (3) Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
    - (4) Hazards and residues associated with use;
    - (5) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and,
    - (6) Dilution procedures.
- (f) Equipment
  - Factors including:
    - (1) Types of equipment and advantages and limitations of each type; and
    - (2) Uses, maintenance and calibration.
- (g) Application Techniques
  - Factors including:
    - (1) Methods or procedures used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;
    - (2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
    - (3) Prevention of drift and pesticide loss into the environment.
- (h) Laws and Regulations
  - Factors including:
    - Applicable State and Federal laws and regulations.

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

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

- (a) Agricultural Pest Control Category
  - (1) Agricultural Plant Pest Control Subcategory

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

- (2) Agricultural Animal Pest Control Subcategory

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

- (3) Fumigation of Soil and Agricultural Products Subcategory

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

- (b) Forest Pest Control Category

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

- (c) Ornamental and Turf Pest Control Category

Applicators shall demonstrate knowledge of

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

(d) Seed Treatment Category

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

(e) Aquatic Pest Control Category

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

(2) 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 recordkeeping requirements under the Delaware Pesticide Law.

(3) Mosquito Control - Applicators shall demonstrate a practical knowledge of the principles associated with the management of mosquitoes, including all

of the following: their life cycle; types of formulations appropriate for their management; methods of application; possible effects on water quality; and, the potential health effects on humans in the target area.

(f) Right-of-way Pest Control Category

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

(g) Industrial, Institutional, Structural and Health Related Pest Control Category

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

(1) General Pest Control Subcategory

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

(2) Wood Destroying Pest Control Subcategory

Applicators must demonstrate knowledge of organisms that destroy structures made of wood including but not limited to beetles, termites and fungi, and conditions conducive to infestation; selection, calibration, and use of appropriate control procedures and their related equipment including: rodding and trenching, topical application of

pesticides and local injection of specially labeled liquid or pressurized aerosol pesticides into infested wood; hazards involved in the handling and use of these pesticides.

(3) Fumigation (Non-agricultural) Subcategory

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

(4) Wood Preservative Subcategory

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

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

(6) Cooling Tower Subcategory - Applicators shall demonstrate a practical knowledge of the labeling instructions, safety precautions and environmental concerns

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

(7) Miscellaneous Subcategory - Applicator must demonstrate knowledge appropriate to their specific field of pest control.

(h) Public Health Pest Control Category

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

(i) Regulatory Pest Control Category

Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(j) Demonstration and Research Pest Control Category

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

this section as may be applicable to their particular activity.

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

8.04 Certification Fees and Renewal

(a) Certification Fees

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

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

(b) Certification Renewal

(1) Commercial Applicators

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

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

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

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

<u>Category of Pest Control</u>	<u>Hours</u>
Agricultural Plant (1A)	8
Agricultural Animal (1B)	4
Fumigation of Soils and Agricultural Commodities (1C)	4

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

(2) Private Applicators

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

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

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

(3) Expiration

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

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

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

8.05 EXEMPTIONS

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

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

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

(c) Owners and employees of any child day-care

center which is operated within a private home.

## Section 9 Standards for Certification of Private Applicators

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

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

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

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

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

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

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

### (a) General Certification

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

### (b) Pesticide Class Certification

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

fungicides on vegetables, seed treatments for plant diseases, and livestock dips for insect control.

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

### (c) Commodity/Crop/Site Certification

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

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

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

### (d) Single Product Certification

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

### (e) Single Products/Single Use Authorization (Emergency Program)

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

## 9.03 Determination of Competency for Private Applicators

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

to be satisfactory evidence of competence.

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

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

#### Section 10 Standards for Supervision of Non-certified Applicators by Certified Private and Commercial Applicators

10.01 Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

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

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

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

#### Section 11 Federal Agency Pesticide Applicators

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

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

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

11.04 The provisions of this section do not apply to non-federal employees contracted to perform pesticide application for the federal government. In an emergency, however, and with the concurrence of the Secretary, a non-certified person may apply pesticides under the direct supervision of a properly certified federal applicator. Within 10 days such person working within the state boundaries must apply for Delaware certification in the normal manner.

#### Section 12 Reciprocity

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

#### Section 13 Revocation

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

#### Section 14 Records

##### 14.01 Commercial Applicators

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

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

the time of application.

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

(c) The date and specific area treated.

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

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

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

(i) Wind velocity and direction

(ii) Temperature

(iii) Relative humidity

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

#### 14.02 Restricted Use Pesticides Dealers

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

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

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

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

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

(e) Date of the sale or transaction.

#### Section 15 Financial Security Required of Licensee

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

(a) Agriculture

(1) Plant Pest Control

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

(2) Agriculture Animal Pest Control

An applicant for certification in this

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

(b) Forest Pest Control

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

(c) Ornamental and Turf Pest Control

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

(d) Seed Treatment

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

(e) Aquatic Pest Control

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

(f) Right-of-way Pest Control

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

(g) Industrial, Institutional, Structural and Health Related Pest Control

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

15.02 Aerial Applicators

Aerial applicators applying for a license in any of the above categories or subcategories shall show evidence of financial security in the minimum of One Hundred Thousand Dollars (\$100,000) for each individual damage and Three Hundred Thousand Dollars (\$300,000) for bodily



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

15.03 Nothing to these regulations shall be construed in any way to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides even though such use conforms to the rules and regulations of the Secretary.

#### Section 16 Storing and Disposal of Pesticides and Pesticide Containers

##### 16.01 Prohibited Acts

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

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

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

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

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

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

##### 16.02 Pesticide and Pesticide Container Disposal

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

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

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

(2) A solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to

dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.

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

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

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

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

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

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

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

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

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

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

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

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

#### 16.03 Pesticide Storage

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

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

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

#### Section 17 Pesticide Advisory Committee

##### 17.01 Expenses of Members Not from Government Departments

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

#### Section 18 Application and Equipment

18.01 No person shall apply, dispense or use any pesticide in or through any equipment or application apparatus unless such equipment or application apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material; all pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall not leak pesticide; all spray distribution systems shall not leak pesticides and any pumps which such systems may have shall not leak pesticides and any pumps which such systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of discharge; and all pesticide

application equipment shall be equipped with whatever cut-off valves and discharge orifices may be necessary to enable the operator to pass over non-target areas without contaminating them.

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

#### Section 19 Antifouling Paint Restrictions

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

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

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

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

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

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

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

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

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

19.04 A person may distribute or sell a marine anti-fouling paint containing organotin with an acceptable release rate to the owner or agent of a commercial boat yard. The

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

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

#### Section 20 Restricted Use Pesticide Dealer Permits

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

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

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

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

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

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

#### 20.04 Issuance of a Dealer Permit:

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

(b) The Department shall issue a Dealer Permit to an applicant upon payment of a fee of \$25.00 for a calendar year or any part of a calendar year.

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

to the permit holder of renewal or denial.

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

20.06 A dealer permit is not transferable.

20.07 The Department, in addition to any penalties authorized by the LAW, may deny, suspend, or revoke the application or permit of a restricted use pesticide dealer if he has failed to comply with any provisions of the LAW or any rules and regulations promulgated thereunder.

#### Section 21 Institutional and Maintenance Pesticide Use Restrictions

21.01 For the purposes of these regulations, the following definitions shall apply:

(a) The term "general use pesticide" shall include all pesticides as defined by 3 Del.C., Delaware Pesticide Law, §1202 (27), with the following exceptions:

(1) Any Restricted Use Pesticides, as defined by 3 Del.C. §1202 (30);

(2) Any State Restricted Use Pesticide, as defined by 3 Del.C., §1202 (31);

(3) Any anti-microbial pesticide used for controlling bacteria, viruses, or other microorganisms.

(b) The term "school" shall mean a completed structure utilized as a public or private school, grades kindergarten through post graduate.

(c) The term "apartment building" shall mean a building that contains four or more dwelling units that are rented primarily for nontransient, permanent dwelling purposes, with rental paid by intervals of one week or longer.

(d) The term "nursing home" shall have the same meaning assigned by 16 Del.C., Chapter 11, §1101.

(e) The term "hospital" shall have the same meaning assigned by 16 Del.C., Chapter 10, §1001 (1).

(f) The term "child day-care center" shall mean a facility, other than a school as defined elsewhere herein, which provides care, education, protection, supervision and guidance on a regular basis for children. Services are provided for part of the 24 hour day, unattended by parent or guardian, and for compensation. Provided, nevertheless, that "child day-care center" shall not include any such facility which is operated within a private home.

(g) The term "private home" shall mean a non-public residence such as a house, duplex, townhouse, apartment, or mobile home where the provider of child day-care services lives and has control over the furnishings and use of space. An individual unit in public housing and university housing complexes is considered a private home.

(h) The term "Institutional and Maintenance applicator" means any person who:

(1) Owns, operates or maintains a school, apartment building, nursing home, hospital or child day-care

center, or is an employee of a school, apartment building, nursing home, hospital, or child day-care center; and who

(2) Applies general use pesticides inside the school, apartment building, nursing home, hospital, or child day-care center.

21.02 A general use pesticide applicator must be certified pursuant to Section 8 of these regulations, unless, such person possesses a valid certification in subcategory 7.07 (e), Institutional and Maintenance Pest Control.

21.03 A person certified as a general maintenance applicator may not engage in the business of pest control outside the scope of the employment for which they have been certified, unless the person becomes certified as otherwise provided by the LAW.

21.04 An owner or manager of a building that is a school, apartment building, nursing home, hospital, or child day-care center may obtain general maintenance pest control services for the building from a person only by:

(a) Contracting with a business licensed pursuant to 3 Del.C., Chapter 12, §1206;

(b) Having the services performed by a general maintenance applicator with a valid certification in Section 7.07(a) or 7.07(e) of these regulations.

21.05 Records of "general use pesticide" applications made in a school, apartment building, nursing home, hospital, or child day-care center shall be kept in accordance with Section 14.01

## Section 22 Restrictions on the Use of Pesticides for the Control of Subterranean Termites

22.01 This section applies to commercial pesticide applications for the control of subterranean termites. It is directed primarily towards soil treatment and does not include other treatments applied as dusts, aerosols or fumigants. Nor does it address application technology such as biological control agents or baits.

22.02 For the purpose of this section, the following definition shall apply:

(a) "Termiticide" shall mean a pesticide registered pursuant to the LAW and which is intended for preventing, destroying, repelling or mitigating termites.

(b) "Continuous chemical barrier" shall mean the application of a termiticide such that the resultant soil residue meets or exceeds the soil residue requirements currently recommended by the Association of Structural Pest Control Regulatory Officials (ASPCRO) and as those requirements may be amended in the future. Soil residue sampling shall be conducted in conformity with the current ASPCRO soil sampling protocol and as it may be amended in the future.

22.03 Termiticides shall be used to establish a continuous chemical barrier in all applicable areas prescribed by the label. However, where the termiticide is applied such that a continuous barrier is not achieved, or

where the termiticide is not applied to all applicable areas prescribed by the termiticide label, the conditions outlined in both (a) and (b) below must be satisfied:

(a) One or more of the following situations is present:

(1) Specific environmental conditions are such that application of the termiticide at the full labeled concentration and volume may result in adverse environmental impact. Examples may include the presence of a well, a footing drain that empties into a water body, a high water table, etc.;

(2) Structural barriers or soil conditions or types exist that prohibit application of the labeled volume or limit access to applicable soil treatment areas;

(3) Construction elements are present that would or could encourage a reduced volume, e.g., poured walls vs. hollow block walls;

(4) Specific customer request, or at the recommendation of the certified applicator.

(b) Within fourteen (14) days following the termiticide application, the following information ~~is~~ shall be furnished in writing to the customer or appropriate person to the customer's agent:

(1) A full disclosure explaining the difference between full and partial applications. The disclosure shall include the termite control strategies being utilized and the reasons for those alternatives;

(2) The pesticide used, including brand name and EPA registration number;

(3) The actual volume of the termiticide applied;

(4) Specific information of sufficient detail to distinguish where treatment actually occurred, including a diagram of the structure identifying treated areas, ~~utilities~~ known well heads and sites of termite activity;

(5) A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty, e.g., retreatment (full or partial), damage repair and retreatment, or no warranty.

This information shall be furnished to the customer or customer's agent on the following form prescribed by the Department: Document# 65/01/06/00/01/101, entitled Termiticide Application Disclosure.

22.04 Any application of termiticides, pursuant to this section, must be conducted with a commercial applicator at the site of application. This commercial applicator must be certified in category 7.07(b), Wood Destroying Pest Control.

22.05 The disclosure information and written notification specified in paragraph 22.03(b) are not required of termiticide treatments to utility poles, fence posts or tree stumps.

2206 Any pre-construction termiticide application shall be applied in accordance with the termiticide product

labeling and the U.S. Environmental Protection Agency Pesticide Regulation (PR) Notice 96-7. For pre-construction treatments, PR Notice 96-7 supercedes this Section, and no pre-construction treatment shall be applied at a lower dosage and/or concentration than specified on the label, for applications prior to installation of the finished grade.

### **TERMITICIDE APPLICATION DISCLOSURE**

For the purpose of complying with the Rules and Regulations of the Delaware Pesticide Law (3 DEL. C., Chapter 12), NOTICE is hereby given to the undersigned that the property described above was treated with a termiticide in the following manner:

Property Location  <hr/> <hr/>	Termiticide _____ <div style="text-align: right; font-size: small;">EPA Reg. No.:</div> EPA Reg. No.: _____  Actual Volume Applied: _____ Concentration (Total Gallons) _____ (% Active Ingredient) _____
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- Treatment of the property was at less than prescribed termiticide label concentration.
- Treatment of the property was less than the volume (gallons of termiticide) prescribed by the termiticide label.
- Treatment excluded areas of treatment prescribed by the termiticide label.

The termiticide application differed from the prescribed label application due to the following conditions:

<input type="checkbox"/> Full label concentration and/or volume could have resulted in the following adverse environment impact: _____	<input type="checkbox"/> Construction elements were present that encouraged a reduced volume.
<input type="checkbox"/> Structural barriers existed that limited access to applicable soil treatment areas.	<input type="checkbox"/> Customer request. Customer initials: _____
<input type="checkbox"/> Structural barriers or soil conditions or types existed that prohibited application at full label concentration or volume. _____	<input type="checkbox"/> Certified applicator recommendation. (See statement on reverse side and any additional comments below.)

Comments:

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Customer or Customer's Agent \_\_\_\_\_

Date \_\_\_\_\_

Signature of Certified Applicator \_\_\_\_\_

Date \_\_\_\_\_

**Attachments**

1. A diagram of the structure identifying treated areas and any sites of termite activity.
  2. A copy of the termiticide product label.
  3. A clear, concise statement indicating whether the application has any guarantee or warranty, and the terms of the guarantee or warranty.
- Labels on all specified by individual termiticide product labels and include concentration, volume, and treatment of a structure for termiticide use. All pre-construction treatments shall be performed at full label volume and/or concentration. This option shall be provided to the customer within 14 days of any termite label application.

<b>DDA</b> Delaware Department of Agriculture Pesticide Section Delaware # 61-9196-000191	3130 South DuPont Hwy. Dover, DE 19901 (800) 327-8687 (DE Only) or (302) 739-4411	0-1 (Dual - Customer Copy) 1 - Applicator Copy 2 - Duplicate File Copy
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#### **APPLICATOR DISCLOSURE STATEMENT**

Termites are a sensitive and resilient force of nature which can and do infest structures which have had termiticide(s).

Many factors influence the scope of any given termite treatment service. Environmental elements, risks of material moving to non-target areas, potential occupant exposure, and construction anomalies are but a few general concerns which may limit the areas of application and amount of materials applied during treatments. Any treatment(s) completed will take into consideration the above-referenced general factors, as well as other specific conditions which may limit the application site and/or reduce the volume of material from that which is allowable by the product label.

Alternative termite treatment methods may include, but are not necessarily limited to, foam treatment, wood treatment and/or bait applications.

## DEPARTMENT OF EDUCATION

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

### Educational Impact Analysis Pursuant To 14 Del. C., Section 122(d)

#### Content Standards

#### A. Type of Regulatory Action Requested Amendment to Existing Regulation

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

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation 500.1 Content Standards, and repeal as separate regulations 500.2 Agriscience, 500.3 Business Finance and Marketing, 500.4 Foreign Languages, and 500.5 Visual and Performing Arts, in order to consolidate the specific content standards with this generic content standards regulation (500.1) and to add to this generic regulation the four sets of content standards approved in September, 1995, (English Language Arts, Mathematics, Science and Social Studies). The amended Content Standards regulation would include the statements made in the current regulation 500.1 Content Standards and list all of the approved sets of content standards in this same regulation including the new regulations for Technology Education scheduled for approval in March 2000. The Secretary and the State Board of Education would add any additional Content Standards as they are approved and would approve changes to the Content Standards.

#### C. Impact Criteria

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

The amended regulation will simply consolidate the current regulations into a single regulation on Content Standards.

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

The amended regulation will simply consolidate the current regulations into a single regulation on Content Standards.

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

The amended regulation will simply consolidate the current regulations into a single regulation on Content Standards.

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

The amended regulation will simply consolidate the current regulations into a single regulation on Content

Standards.

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

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

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

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

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

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

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

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

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

The amended regulation is simply consolidating existing regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

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

#### As Appears In The Regulations Of The Department Of Education

500.1 Content Standards  
July 1997

~~1.0 Each school district shall develop and implement instructional programs for grades K-12 in alignment with the State Content Standards. Districts shall also provide for the integration of content areas within and across curricula. Districts shall keep instructional materials and curricula current and consistent with the Guidelines and Standards adopted by the State Department of Education and any subsequent amendments thereof.~~

500.2 Standards for Agriscience  
July 1997  
(See document for full text)

500.3 Standards for Business, Finance and Marketing  
July 1997  
(See document for full text)

500.4 Standards for Foreign Languages  
July 1997  
(See document for full text)

500.5 Standards for Visual and Performing Arts  
November 1997  
(See document for full text)

### **As Amended**

500.1 Content Standards  
July 1997

1.0 Each school district shall develop and implement instructional programs for grades K-12 in alignment with the State Content Standards, as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education, in the following areas: English Language Arts, Mathematics; Science; Social Studies; Agriscience; Business, Finance and Marketing; Foreign Language; Visual and Performing Arts; and Technology Education.

1.1 Districts shall also provide for the integration of content areas within and across curricula.

1.2 Districts shall keep instructional materials and curricula current and consistent with the Guidelines and Standards adopted by the State Department of Education and any subsequent amendments thereof.

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### **Educational Impact Analysis Pursuant To 14 Del. C., Section 122(d)**

#### **K-12 Guidance Programs**

A. Type of Regulatory Action Requested  
Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Acting Secretary seeks the consent of the State Board of Education to amend the regulations for K-12 Guidance Programs, page A-23 and Appendix B in the *Handbook for K-12 Education*. The amended version of the regulations will still require local school districts to have a plan for their K-12 Guidance Program but will now be based on the National Standards for School Counseling Programs, and will not require sending the plan to the State Department

of Education for approval. The existing Delaware Guidelines for Counseling Programs are very similar to the new national standards even dividing the standards into the same categories, Academic Development, Career Development and Personal/Social Development. It was decided that using the National Standards for Delaware's guidance program would be the most appropriate way to move into the new century.

C. Impact Criteria

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

The amended regulations address the design of guidance programs, not student achievement.

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

The regulations address the design of guidance programs, not equity issues.

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

The amended regulations address the design of guidance programs, not health and safety issues.

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

The amended regulations address the design of guidance programs, not students' legal rights.

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

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

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

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

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 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 not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing

the purpose of the regulations?

The purpose of the amendment is to make the regulations less burdensome.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no cost to the state or local school boards for complying with the amended regulations.

#### As Appears in the Handbook for K-12 Education

#### H. GUIDANCE AND COUNSELING

##### ~~I. REGULATIONS AND GUIDELINES FOR K-12 GUIDANCE PROGRAMS~~

~~Regulations and Guidelines for K-12 Guidance Programs were approved in March 1990 by the State Board of Education. These are included in Appendix B. (State Board Approved March 1990)~~

#### As Appears in Appendix B of the Handbook for K-12 Education, Pages 1 & 2

##### REGULATIONS FOR K-12 GUIDANCE PROGRAMS

~~The purpose of these regulations is to provide a framework for a K-12 developmental guidance program. These programs should be planned and coordinated to emphasize the development of positive self-esteem, the development of activities to promote academic/career and personal/social growth, and to encourage economic and social self-sufficiency. This requires the coordination of support services within the school, district, and community.~~

~~I. Each school district in Delaware shall have a written plan describing the guidance program for the district which is reviewed periodically and updated at least every five years.~~

~~A. The plan shall be submitted to the Department of Public Instruction, Instruction Division, for review prior to the implementation date of September 1, 1991. Any changes or revisions to the district plan shall be submitted to the Department of Public Instruction, Improvement and Assistance Branch, as they occur.~~

~~H. The district guidance plan shall be a written description of a sequential program of services and activities to be available to all students in grades K-12.~~

~~A. The plan shall address the needs of students in the areas of personal/social development, academic development, and career/life planning.~~

~~B. The plan shall systematically include as part of the total program any existing specialized services such as the Career Guidance and Placement Counselor, drug and substance abuse counseling, peer counseling, crisis counseling, and other counseling related programs.~~

~~C. The plan shall identify an individual to coordinate the guidance program within the district for all grade levels.~~

~~D. The plan shall describe the involvement and responsibilities of counselors, administrators, specialists, and parents in the guidance program.~~

~~E. The plan shall describe the working relationships of school counselors to other specialists.~~

~~F. The plan shall provide for the involvement of a district level advisory committee which includes parents, district teachers, and/or staff members, counselors from each level of education, administrators, students, representatives of business and industry, and agencies which provide support services for district children.~~

~~G. The plan shall include procedures for coordinating school counseling services with agencies and community groups which provide services for children.~~

~~H. The plan shall include a job description for each counselor which reflects the activities and services described in the guidance program.~~

~~I. The plan shall include a method of evaluating the program which enables counselors to determine their effectiveness in terms of both process and outcome.~~

~~J. The plan shall describe services for all students including special needs students and those identified as being at risk.~~

#### As Amended

#### **500.13 Regulations for K-12 Guidance Programs**

1.0 Each local school district shall have a written plan describing the guidance program for the district which shall be periodically reviewed and updated by the local school district. The plan shall reflect the National Standards for School Counseling Programs as developed by the American School Counselors Association.

#### **Educational Impact Analysis Pursuant to 14 Del. C., Section 122(d)**

#### **Educational Programs for Students with Limited English Proficiency**

**\* PLEASE NOTE THAT REGULATION 900.6, EDUCATIONAL PROGRAMS FOR STUDENTS WITH LIMITED ENGLISH PROFICIENCY, WAS ORIGINALLY PROPOSED IN 3 DE REG 900 (1/1/00). THE PROPOSAL AS SET FORTH IN THE JANUARY 1, 2000 REGISTER AT PAGE 900 HAS BEEN WITHDRAWN AND IS REPROPOSED.**

A. Type of Regulatory Action Requested  
Amendment to Existing Regulation



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

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulations Educational Programs for Students with Limited English Proficiency, Pages A-16 – A-18 in the *Handbook for K-12 Education*. The amended regulations are substantially changed and provide specific directions to local school districts as to the services that they must provide to students with limited English proficiency. The regulations define a student with limited English proficiency, provide an identification procedure, define a program for these students and set forth a reclassification procedure. The regulations also provide directions for monitoring student progress, program evaluation, reports for DOE and communication with language minority parents or guardians. Finally the regulations state that language minority students are to be a part of the Delaware Student Testing Program (DSTP).

**C. Impact Criteria**

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

The amended regulations are designed to assist limited English proficient students in improving their English skills and improving their achievement in all content areas.

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

The amended regulations are designed to provide limited English proficient students with an equal opportunity to an education.

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

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that limited English proficient students' legal rights are respected?

The amended regulations will insure that legal rights of students with limited English proficiency are protected.

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

The amended regulations set the parameters around required services for limited English proficient students and still preserve the necessary authority and flexibility at the local board and school level.

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

The amended regulations do not require additional reporting but may require additional administrative decisions at the local board and school levels pertaining to instruction

for students with limited English proficiency.

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

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

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

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

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

The Office of Civil Rights requires that the Department of Education make such regulations.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There is an additional cost to local school boards for compliance with the regulations and funds are made available through the Academic Excellence Units and Extra Time for Students grants. The statewide English language proficiency assessment will be purchased by the Department of Education.

**From the Handbook for K-12 Education****~~I.F.3. Limited English Proficiency Programs (Bilingual Education)~~**

~~a. The State Board of Education believes in the following program goals for students of limited English proficiency (LEP):~~

~~(1) the ensurance of equal educational opportunity to every eligible student of limited English proficiency;~~

~~(2) the enabling of limited English proficient students to continue to develop academically while achieving competence in the English language in order to facilitate their successful integration into regular classrooms and to allow them to meet grade promotion and graduation standards.~~

**~~b. Eligibility~~**

~~Eligibility for instructional programs designed for limited English proficient students should be based on the following criteria:~~

~~(1) A student who by reason of foreign birth or ancestry speaks a language other than English, or who has been identified by a valid English language assessment~~

instrument as a pupil of limited English proficiency, is eligible to receive a program of bilingual education or English as a Second Language.

(2) The parents or legal guardians of limited English proficient children identified for enrollment in such programs should be informed of the reasons for their child's selection, the native language used in the program, and the alternative educational programs in the local district.

(3) Parental involvement in their children's instructional program should be encouraged, including the option of deciding whether or not to enroll their children in such programs.

e. **Instructional Programs**

(1) Instructional programs for pupils of limited English proficiency should not exceed three years, which period may be extended by the State Superintendent with respect to individual pupils, upon application by the appropriate school authorities.

(2) Where appropriate and practicable, transitional bilingual education programs may be provided to meet the needs of qualified pupils in order to facilitate their future integration into the regular school curriculum. Where feasible, the bilingual education program may be provided on a cooperative, multi-school, multi-district or regional basis.

(3) Limited English Proficiency students bring to their schools and communities languages and cultural heritages that enrich the curriculum and school setting. Therefore, it is important to provide all children with opportunities for gaining an understanding of their own culture as well as the cultures of others.

(4) Bilingual programs should be designed to:

(a) provide content instruction for children of limited English proficiency using the child's native language and English;

(b) provide native language instruction; and

(c) provide English as a Second Language (ESL) instruction.

(5) The State Board of Education recognizes ESL-only programs as currently the best solution in answering the needs of school districts with small numbers of children from nations with uncommon languages or with small numbers of children speaking the same non-English language. ESL instruction should include the four language skills areas: listening/comprehension, speaking, reading, and writing and assist in the learning of content areas through structured monolingual instruction in English.

(6) Instruction in content area subjects (mathematics, science, and social studies) should be equivalent in scope to the curriculum required by the Department of Public Instruction and the local school district. Pupils taught in their native language are expected to progress in the content areas taught at the same rate as their English-speaking peers are expected to progress when

taught in English.

(State Board Approved February 1987)

**As Amended**

**900.6 Educational Programs for Students with Limited English Proficiency**

1.0 General. Each district shall identify upon enrollment every student with limited English proficiency, and each district shall make available to every identified student a program of instruction until such time as the student becomes fully proficient in English.

2.0 Student with Limited English Proficiency Defined. For the purpose of this section, a student with limited English proficiency is one who, by reason of foreign birth or ancestry, speaks a language other than English, and either comprehends, speaks, reads or writes little or no English, or who has been identified as a pupil of limited English proficiency by a valid English language proficiency assessment approved by the Department of Education for use statewide.

3.0 Identification of Eligible Students. Each school district shall implement a system for the timely and reliable identification of students with limited English proficiency. This system shall include a home language survey and an assessment of English language proficiency.

3.1 A home language survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent or guardian the student's first acquired language and the language(s) spoken in the student's home.

3.2 Any student for whom a language other than English is reported on the home language survey as the student's first acquired language or as a language used in the student's home shall be administered an English language proficiency assessment. Such assessment shall be conducted in conformance with the following standards:

3.2.1 the assessment shall be based on a standardized instrument, validated for this purpose and approved by the Department of Education for use statewide;

3.2.2 the assessment shall measure English proficiency in reading, writing, speaking and oral comprehension, except that reading and writing proficiency will generally not be assessed for students below grade 2;

3.2.3 the assessment shall be conducted by qualified personnel trained in the administration of the assessment instrument;

3.2.4 the assessment shall be conducted as soon as practicable, but not later than 25 school days after enrollment.

3.3 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut-off score in reading, writing, or oral

English established by the Department of Education shall be regarded as a student with limited English proficiency and shall be entitled to a program of instruction for students with limited English proficiency. Reading and writing proficiency would not be considered for students below grade 2.

3.4 For each student enrolled in the 1999-2000 school year, each district shall conduct a home language survey, to the extent practicable, of every enrolled student as in 3.1 and, as applicable pursuant to 3.2, an English language proficiency assessment in accordance with 3.2.1 through 3.2.3 by the conclusion of the 1999-2000 school year. Beginning with the 2000-2001 school year, each district shall conduct such a home language survey, and as appropriate, an English language proficiency assessment of every new student at the time of enrollment in a school.

4.0 Specially Designed Program. Each enrolled student who is eligible for services pursuant to 3.3 above, shall be provided with a program of instruction for students with limited English proficiency.

4.1 A program of instruction for students with limited English proficiency shall include: formal instruction in English language development; and instruction in academic subjects which is designed to provide students with limited English proficiency with access to the District's curriculum in a manner comparable to that provided to other students.

4.2 In selecting program(s), each district may choose from a variety of programs that are recognized as sound by experts in the education of limited English proficient students. Such programs include bilingual programs as well as programs that are delivered exclusively in English.

4.2.1 Bilingual programs shall be designed to include:

4.2.1.1 standards-based instruction for students with limited English proficiency, using the student's native language and English;

4.2.1.2 instruction in reading and writing in the student's native language; and

4.2.1.3 English as a second language instruction.

4.2.2 Programs delivered exclusively in English shall be designed to include:

4.2.2.1 standards-based instruction for students with limited English proficiency, using English in a manner that takes into account the student's level of English proficiency;

4.2.2.2 instruction which builds on the language skills and academic subject knowledge the student has acquired in his or her native language; and

4.2.2.3 English as a second language instruction.

4.2.3 Programs shall be implemented

consistent with the goals of prompt acquisition of full English proficiency and progress in academic subject areas that is at a rate comparable to that of students who are not students with limited English proficiency.

4.2.4 Programs shall include instruction in academic subjects (mathematics, science, social studies) which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

4.2.5 Instruction shall be delivered by certified teachers who are trained in the delivery of instruction to students with limited English proficiency.

4.2.6 Where a bilingual program is offered, the parent or guardian of an eligible student may opt for the eligible student to be served in a program for students with limited English proficiency carried out exclusively in English.

5.0 Reclassification Procedures. At least once each school year, each eligible student shall be considered for reclassification as a fully English proficient student who no longer needs a program for students with limited English proficiency.

5.1 Reclassification shall include an assessment of English proficiency in accordance with the standards in 3.2.1 - 3.2.4 above.

5.2 Any student who achieves a score on the English language proficiency assessment which is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall continue to be eligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency would not be considered for students below grade 2.

5.3 Any student who achieves a score on the English language proficiency assessment at or above the eligibility cut-off score in reading, writing, and oral English established by the Department of Education shall be reclassified as fully English proficient and considered ineligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency would not be considered for students below grade 2.

5.4 Before removing any student from a program for students with limited English proficiency, the district shall assess the student's level of performance in academic subject areas (mathematics, science and social studies). Any reclassified student found to have incurred academic deficits while in the program for students with limited English proficiency shall be provided with supplemental instructional services in the relevant subject areas.

6.0 Monitoring Performance of Ineligible and Reclassified Students. For at least one school year following the determination of ineligibility or reclassification, a district

shall monitor the academic performance of each student who has been: assessed pursuant to 3.2 above and found ineligible for a program; or reclassified as fully English proficient pursuant to 5.3 above. Students who experience academic performance problems during this period shall, based on further assessment, be considered for reentry into a program of instruction for students with limited English proficiency.

7.0 Program Evaluation. Each district shall prepare an annual evaluation of its program(s) for students with limited English proficiency. Such evaluation shall be available for review upon request. At a minimum, this program evaluation shall:

7.1 consider the validity of the assessment processes carried out pursuant to 3.2 and 3.3, and 5.1, 5.2, 5.3, and 5.4 above, in terms of predicting student success in the regular instructional program;

7.2 consider the effectiveness of each program of instruction for students with limited English proficiency in achieving the goals and standards in 4.2. above; and

7.3 describe any modifications that have been proposed or implemented, based on the evaluation data.

8.0 Student Information Reports. Each district shall provide the Department of Education annually with the language background, the current English proficiency level of each LEP student enrolled in the district, and the type of program in which the LEP student receives services, and related information. Such reporting shall take place in a manner prescribed by the Department of Education. A district shall provide such other information as the Department of Education may request, in order to assure adherence to this regulation.

9.0 Communications with Language Minority Parents/Guardians. Each district shall ensure that communications with parents/guardians, including notices of eligibility for a program for students with limited English proficiency, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents/guardians, is provided to each language minority parent/guardian in a language the parent/guardian can understand to the extent possible.

10.0 Accountability. Students with limited English proficiency and students reclassified as fully English proficient shall be included in the Delaware Student Testing Program (DSTP). Alternative assessment measures may be used as provided in Department of Education guidelines, including the *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may, from time to time, be amended hereafter.

10.1 Differential analysis of the results of the DSTP and any alternative assessment measures shall be conducted on the performance of students with limited English proficiency and students reclassified as fully English proficient. Such data shall be made available with other

accountability data for each district and the state as a whole.

10.2 The Department of Education and each district shall ensure that consequences and benefits under Delaware's system of statewide accountability are dispensed in a manner that is equitable to students with limited English proficiency and students reclassified as fully English proficient, based on assessments which accurately measure the student's performance in the area being assessed and are reflective of the curriculum which was delivered to the student.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

#### Public Notice Medicaid / Medical Assistance Program

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by February 29, 2000.

Revision:

#### 17700 Qualified Disabled and Working Individuals

Effective July 1, 1990, Section 6408 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 mandates coverage of certain Medicare beneficiaries who are still disabled but lost premium-free Part A Medicare coverage because they returned to work. Medicaid will pay the Part A premium for Qualified Disabled and Working Individuals (QDWIs) who meet the income and resource requirements.

A QDWI is an individual:

- who is entitled to enroll in Medicare Part A under §1818A of the Social Security Act;
- whose income does not exceed 200% of the Federal Poverty Level;

- ~~whose resources do not exceed twice the SSI resource limit; and~~
- ~~who is not otherwise eligible for Medicaid.~~
- An individual who becomes eligible for Medicaid again following a period of at least one month of ineligibility for Medicaid.

**17700.3 Financial Eligibility**

The income ~~and resource~~ methodologies of the SSI program will be used to determine eligibility for this program. See the QMB section for definitions of income ~~and resources~~. (DSSM 17300 )

The guaranteed eligibility period begins with the first of the month in which the individual enrolls in the DSHP and continues for six consecutive months. The individual who is enrolled in DSHP retains eligibility for Medicaid services, even if the individual otherwise loses Medicaid eligibility.

**17700.3.2 Resources**

~~The resource limit is twice the SSI limit.~~

~~Follow the resource guidelines outlined in the Qualified Medicare Beneficiary program.~~

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**DIVISION OF SOCIAL SERVICES**

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

**Public Notice  
Medicaid / Medical Assistance Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by February 29, 2000.

**Revision:****Guaranteed Eligibility**

Section 1902(e)(2) of the Social Security Act, as amended by the Balanced Budget Act of 1997, permits up to six months of guaranteed eligibility for individuals if they are enrolled in a managed care organization.

A six-month period of guaranteed eligibility is defined as a six-month period of continuous enrollment in a managed care organization under the Diamond State Health Plan (DSHP). The following individuals may be found eligible for a six-month period of guaranteed eligibility:

- A first-time Medicaid recipient

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF NURSING HOME  
ADMINISTRATORS**

Statutory Authority: 24 Delaware Code,  
Sections 5200, 5204(1) (24 Del.C. §§5200 and  
5204(1))

**Order Adopting Rules and Regulations**

AND NOW, this 11th day of January, 2000, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Examiners of Nursing Home Administrators of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

**Nature of the Proceedings**

The Board proposes to add a new rule, Rule 2(A)(8) to its existing Rules and Regulations, pursuant to its authority under 24 *Del.C.* §§5200 and 5204(1).<sup>1</sup> The purpose of this Rule is to provide a definition of "direct supervision" as that term is used by the Board. Notice of the public hearing on the Board's proposal was published in the *Delaware Register of Regulations* on October 1, 1999 and in two Delaware newspapers of general circulation, all in accordance with 29

*Del.C.* §10115. The public hearing was held as noticed on November 9, 1999. The Board deliberated and voted on the proposed rule following the public hearing at the November 9, 1999 meeting. This is the Board's Decision and Order ADOPTING Rule 2(A)(8) as proposed.

**Evidence and Information Submitted at Public Hearing**

The Board received no written comments in response to the notice of its intention to adopt the proposed Rule defining "direct supervision." The only comment received at the public hearing was from Irene Waldron, of Delaware Health Care Facilities, who stated that the proposed definition was a good, accurate definition of "direct supervision," and that the definition helped clarify the requirement.

**Findings of Fact and Conclusions**

As outlined in the preceding section, the public was given the required notice of the Board's intention to adopt a

1. At the public hearing, counsel for the Board noted that the publication of the proposed regulation in the Delaware Register cited to an incorrect statute section (cited as 24 Del. C. §2007(a)(1)) in citing the Board's authority to adopt the regulation. The correct statutory authority was clarified at the hearing.

regulation and was offered an adequate opportunity to provide the Board with comments on the proposed regulation. The Board further concludes that its consideration of the proposed Rule and Regulation is within the Board's general authority to promulgate regulations under 24 *Del.C.* §5200. Additional statutory authority for the Board's adoption of Rule 2(A)(8), is found at 24 *Del. C.* §5204(1) which imposes upon the Board the duty of developing, imposing and enforcing standards for licensure, to ensure the qualifications of nursing home administrators.

The Board requires that candidates for licensure successfully complete an "Administrator-In-Training" (AIT) Program under the direct supervision of a Preceptor. Defining the term "direct supervision" will clarify the AIT requirement; will allow candidates and preceptors to better understand the direct supervision provision and will provide for consistent, quality training of administrators, by ensuring that a preceptor is available on the premises for consultation with and oversight of the trainee.

In summary, the Board concludes that the proposed addition to its Rules and Regulations is necessary for the enforcement of 24 *Del.C.* Chapter 52, and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulation as proposed is in the best interest of the citizens of the State of Delaware, particularly the direct recipients of services regulated by the Board. The Board, therefore, adopts Proposed Rule and Regulation 2(A)(8), as set forth in Exhibit "A" attached hereto.

### **Order**

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Examiners of Nursing Home Administrators, IT IS HEREBY ORDERED THAT:

1. Proposed Rule and Regulation 2(A)(8) is *approved and adopted* in the exact text attached hereto as Exhibit "A".
2. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations*, pursuant to 29 *Del.C.* §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

By Order of the Board of Examiners of Nursing Home Administrators  
(as authenticated by a quorum of the Board):

Ellen Magee, President, Public Member  
Gladys Adams, Public Member  
Dr. John Forest, Physician Member  
Linda Jones, Public Member  
Joan McDonough, Public Member  
Patricia McLaughlin, Professional Member

Erwin Meyer, Public Member  
Daniel Wolfberg, Professional Member

## **THE DELAWARE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

### **RULES AND REGULATIONS**

Rule 1. Source of Authority: 24 Delaware Code, Chapter 52

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

Rule 2. General Definitions.

A. Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

1. The term "Board" means the Delaware State Board of Examiners of Nursing Home Administrators.

2. The term "Nursing Home Administrator" means the individual responsible for planning, organizing, directing and controlling the operation of a nursing home, or who in fact performs such functions, whether or not such functions are shared by one or more other persons, and who is duly licensed by the Board.

3. The term "Nursing Home Administrator-In-Training" means an individual registered as such with the Board, under direct supervision of a currently licensed Delaware Nursing Home Administrator in the Sponsoring Facility (Spons), and/or Skilled Nursing Facility (SNF), and/or Assisted Living Facility (AL).

4. The term "Practice of Nursing Home Administration" means the performance of any act or the making of any decision involved in the planning, organizing, directing and/or controlling of a nursing home.

5. The term "Nursing Home" means any institution, building or agency in which accommodation is maintained, furnished or offered for any fee, gift, compensation or reward, for the care of more than four aged, infirm, chronically ill or convalescent persons, that is duly licensed by the State Division of Public Health.

6. The term "Person" means an individual and does not include the terms: firm, corporation, association, partnership, institution, public body, joint stock association or any other group of individuals.

7. Term "Preceptor" means an individual who currently has a Delaware Nursing Home Administrator license and is employed in a Skilled Nursing Facility (SNF)

or Assisted Living Facility (ALF).

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

#### Rule 3. Board Meetings.

A. The Board may meet at least every other month, with location and dates set by the President, in accordance with the Freedom of Information Act.

B. The President, or other presiding officer of the Board, may call special meetings of the Board when necessary, upon a minimum of 24 hours notice.

#### Rule 4. General Powers.

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

B. The Board may seek counsel and advice from appropriate State Agencies, as needed.

C. From time to time, the Board shall make and publish such Rules and Regulations, not inconsistent with the Law, as it may deem necessary and proper for the execution and enforcement of the Law and Rules and Regulations governing the licensing and registration of Nursing Home Administrators.

D. The Board shall exercise quasi-judicial powers, not inconsistent with the law.

#### Rule 5. Officers and Duties.

A. The Board shall elect annually from its membership a President, Vice President, and Secretary.

B. The President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the absence of the President, the Vice President shall preside at meetings and perform all duties usually performed by the President.

#### Rule 6. Scheduling of Examinations and Re-Examinations.

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

#### Rule 7. Pre-Examination Requirements; Conditions Precedent.

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

A. Is at least 21 years of age.

B. Shall meet the requirements of 1 or 2 or 3 set forth below:

1. Possesses a baccalaureate or graduate degree in Health & Human Services, Hospital Administration or Business Administration and,

a. has three months experience as a Nursing Home Administrator or

b. has successfully completed six months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program) or

c. has demonstrated administrative experience as the Board deems sufficient, or

2. Possesses a baccalaureate or graduate degree in a specialty other than Health & Human Services, Hospital Administration or Business Administration and,

a. has six months experience as a Nursing Home Administrator or

b. has successfully completed nine months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program) or

c. has demonstrated administrative experience as the Board deems sufficient, or

3. Possesses an associate degree or a current Delaware license as a Registered Nurse and,

a. has twelve months experience as a Nursing Home Administrator or

b. has successfully completed twelve months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program) or

c. has demonstrated administrative experience as the Board deems sufficient to satisfy this requirement.

C. In addition to the degree requirements listed in Rule 7.

1. has completed a course of study administered by an accredited educational institution, provided that both the course of study and the educational institution has been pre-approved by the Board as providing adequate academic preparation for nursing home administration, or



2. has demonstrated comprehensive experience and education which the Board deems sufficient to satisfy this requirement.

**Rule 8. Application for Examination.**

A. An applicant for examination and qualification for a license as a Nursing Home Administrator shall make application in writing, on forms provided by the Board, and shall furnish evidence satisfactory to the Board that he/she has met the pre-examination requirements as provided for in the State Licensing Statutes and Rule 7 of these Rules and Regulations.

B. To establish suitability and fitness to qualify for a license as a Nursing Home Administrator, as required by the State Licensing Statute, prior to being submitted to examination for licensure as a Nursing Home Administrator, the applicant shall furnish evidence satisfactory to the Board of ability to perform the essential functions of a licensed Nursing Home Administrator.

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

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

2. Ability to assume responsibilities for the administration of a nursing home as evidenced by prior accredited activities and evaluation of prior services and evidence secured by the Board, and

3. Ability to relate the physical, psychological, spiritual, emotional and social needs of ill and/or aged individuals to the administration of a nursing home and to create the compassionate climate necessary to meet the needs of the patients therein with or without reasonable accommodation, and

4. Thorough knowledge and demonstrated understanding of the subjects as incorporated in the list of Rule 10.

C. The basic requirements for suitability set forth herein are to be considered minimal and may not be waived.

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

A. An applicant for examination who has been disqualified shall be given written notification by certified mail of his/her disqualification and the reason therefore and the applicant's right to a hearing.

B. All proceedings shall be conducted according to the Administrative Procedures Act.

C. Where an applicant for examination has been disqualified, he/she may submit a new application for qualification for examination provided, however, that he/she shall be required to meet the requirements for licensing as

shall be in force at the time of such reapplication.

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

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

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

**Rule 11. Grading Examinations.**

A. Every candidate for a Nursing Home Administrator's license shall be required to pass the National Association of Boards examination (NAB).

B. In the event the national examination is failed, the applicant will be notified by the Administrative Assistant. The applicant for licensure will be permitted to retake the examination a maximum of two additional times. The fee for the examination will be set by Division of Professional Regulation. The first makeup examination must be taken within three months and the second, if necessary, within the following six month period. If an applicant must take the exam for a third time, it will be necessary for the applicant, prior to taking the third examination, to spend 40 hours working in a skilled care facility, previously approved by the Board, under a Delaware licensed administrator.

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

National scale-113 correct out of 150

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

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

Rule 13. Programs for Continuing Education Credits.

A. Continuing education programs consisting of Board approved seminars, resident or extension courses, conferences and workshops totaling 48 classroom hours or more, on any of the subject areas enumerated in Paragraph B below, are required for biennial licensure of a license as a Nursing Home Administrator. A maximum of 24 additional credit hours may be carried forward into the next licensure period, however, they must be earned within the last nine months of the preceding licensure period. The following are requirements for license renewal:

1. For licenses initially authorized during the first six months of the biennial period, 36 credit hours will be required for renewal.

2. For licenses initially authorized during the second six months of the biennial period, 24 credit hours will be required for renewal.

3. For licenses initially authorized during the third six months of the biennial period, 12 credit hours will be required for renewal.

4. For licenses initially authorized during the fourth six months of the biennial period, no credit hours will be required for renewal.

5. When continuing education units are not met, there will be no extensions, absent showing hardship.

B. Content of programs of continuing education shall include one or more of the following general subject areas or their equivalents:

1. Applicable standards of environmental health and safety,
2. Local health and safety regulations,
3. General Administration,
4. Psychology of patient care,
5. Principles of medical care,
6. Personal and social care,
7. Therapeutic and supportive care and services in long-term care,
8. Department organization and management,
9. Community interrelationships, and,
10. Business or financial management.

C. Programs of continuing education:

1. Those conducted solely by accredited educational institutions.

2. Those conducted jointly by educational institutions and associations, professional societies or organizations other than accredited colleges or universities.

3. Those conducted solely by associations, professional societies and other professional organizations other than accredited educational institutions.

4. Those self-instruction or home study courses, video computer-assisted programs, and teleconferences, pre-approved by the Board, may be accumulated at no more than twelve hours per renewal period.

D. Upon completion of an approved program of study

the sponsor or sponsors of the program shall issue certificates of attendance or other evidence of attendance, satisfactory to the Board.

E. Nothing contained in this rule shall preclude the Board from providing for any program of study which excludes subjects which shall be in derogation of, or in conflict with, the teachings and practices of any recognized religious faith, providing however, any applicant seeking to be entitled to be admitted to such program of study hereunder, shall submit evidence satisfactory to the Board that he/she is in fact an adherent of such recognized religious faith.

Rule 14. Licenses.

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

1. Any licensee requesting an inactive status shall be notified the Board has no provision for such status and, therefore, the license in question shall be considered active and valid, regardless of the place of residence and/or occupation of the license holder, until its official expiration date, after which any application for reinstatement will be addressed as provided in Rule 15 of these Rules and Regulations.

B. Board approval for Acting Nursing Home Administrator

1. In the event of a permanent loss of a regularly licensed Nursing Home Administrator by death, disability, resignation, dismissal and or any other unexpected cause, or due to change of ownership of the facility, the owner, governing body or other appropriate authority of the nursing home suffering such removal, may designate an Acting Nursing Home Administrator. The Board may at its discretion, issue without examination a permit for a period not to exceed nine months. Such permit will be issued to an applicant who fulfills the requirements of a and b as follows :

a. Rule 7.

b. Has been nominated to be the Acting Nursing Home Administrator in the particular facility which shall be identified in the application.

2. In the event of a change in the ownership of the

facility, resulting in the removal of the licensed Nursing Home Administrator, the new owner, governing body or other appropriate authority of the nursing home may designate an Acting Nursing Home Administrator under the criteria in Rule 14, B1 above.

C. No Board approval for acting Nursing Home Administrator shall be issued to an individual if that individual is employed by a facility whose administrator has operated under an acting permit within the previous year.

D. No facility may have concurrent acting permits.

#### Rule 15. Renewal of Licensure.

A. Every person who holds a valid license as a Nursing Home Administrator, issued by the Board, shall biennially apply to the Board for a new license, and report any facts requested by the Board.

B. On making application for renewal of license, the established fee shall be submitted and satisfactory evidence shall also be submitted to the Board that during the preceding two year period, the applicant has attended continuing education programs or courses of study as provided in Rule 13 of these Rules and Regulations.

C. A licensed Nursing Home Administrator whose license has expired may, within two years following the licensure period, have his/her license reinstated without examination upon payment of the renewal fee, plus a late fee. In addition, satisfactory evidence shall also be submitted to the Board that during the preceding two year period, the applicant has attended continuing education programs or courses of study as provided in Rule 13 of these Rules and Regulations. Any licensee whose license has expired for a period in excess of a two-year licensure period may have his/her license reinstated upon payment of the renewal fee, late fee and upon satisfying the Board as to the applicant's current qualifications by completing an application form as outlined in Rule 8 of these Rules and Regulations, providing, however, such applicant may attach a resume in lieu of completing sections 4 and 5 of the application form. Satisfactory evidence shall also be submitted to the Board that during the preceding two year period, the applicant has attended continuing education programs or courses of study as provided in Rule 13 of these Rules and Regulations.

D. Only an individual who has qualified as a licensed Nursing Home Administrator and who holds a valid, current registration certificate pursuant to the provisions of these Rules and Regulations, shall have the right and the privilege of using the abbreviation "N.H.A." after his/her name. No other person shall use or shall be designated to such title or abbreviation or any other words, letters, sign, card or device, tending to or intended to indicate that such person is a licensed Nursing Home Administrator.

E. The Board shall maintain all approved applications for licensing of Nursing Home Administrators. The Board shall maintain a complete file of such other pertinent

information as may be deemed necessary.

#### Rule 16. Refusal, Suspension and Revocation of License.

A. After due notice to the licensee with an opportunity to be heard at a formal hearing, the Board may suspend, revoke or refuse to issue a license for a Nursing Home Administrator, or may reprimand or otherwise discipline a licensee. Such license may be denied, revoked, or suspended if applicant or licensee has violated any of the following:

1. Willfully or repeatedly violated any of the provisions of the Laws, Rules or Regulations pertaining to the licensing of a Nursing Home Administrator.

2. Willfully or repeatedly violated any of the provisions of the Law, Rules or Regulations of the licensing or supervising authority or agency of the State or political subdivision thereof having jurisdiction over the operation and licensing of nursing homes;

3. Been convicted of a felony;

4. Has practiced fraud, deceit or misrepresentation in securing a Nursing Home Administrator's license;

5. Has practiced fraud, deceit or misrepresentation in his/her capacity as a Nursing Home Administrator;

6. Has exhibited acts or practices as a Nursing Home Administrator that show he/she is unfit or incompetent to practice by reason of negligence, habits or other causes, including but not limited to:

a. Commission of acts of misconduct in the operation of a nursing home under his/her jurisdiction;

b. Is currently using, in the possession of or has been convicted of the unlawful sale of narcotic drugs, look-alike substances or illegal drugs or alcohol;

c. Has wrongfully transferred or surrendered possession of either an acting or permanent license;

d. Has been guilty of fraudulent, misleading or deceptive advertising;

e. Has falsely impersonated another licensee of a like or different name;

f. Has failed to exercise true regard for the safety, health and life of any resident;

g. Has willfully permitted unauthorized disclosure of information relating to a resident of his/her records;

h. Has discriminated in respect to residents, employees or staff on the basis of age, race, religion, sex, color, disability, or national origin; or

i. Is unable to perform the essential requirements of a Nursing Home Administrator.

#### Rule 17. Complaints and Hearing Procedures.

The procedure for the investigation and prosecution of alleged violations of this chapter and these Rules and

Regulations, shall be set forth in 29 Del. C. Sec. 8810.

Rule 18. Reciprocity.

A. The Board, at its discretion, and otherwise subject to the law pertaining to the licensing of a Nursing Home Administrator prescribing the qualifications for a Nursing Home Administrator license, may endorse a Nursing Home Administrator license issued by the proper authorities of any other State, upon payment of the regular established fee and upon submission of evidence satisfactory to the Board that:

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

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

Rule 19. Restoration and Reinstatement of License.

A. Restoration of a license may be considered after a period of one year from the revocation or suspension date by the Board, at its discretion, upon submission of evidence satisfactory to the Board that the grounds for suspension or revocation has been removed, except where the grounds are for a felony or conviction of Medicaid or Medicare fraud.

B. Upon denial of such application for restoration of a license, the Board shall grant the applicant a formal hearing upon request, in accordance with the Administrative Procedures Act.

Rule 20. Display of Licenses.

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

Rule 21. Duplicate Licenses.

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

Rule 22. Applicability, Legal Effect, Severability.

A. The Rules and Regulations of the Board shall be supplemental to the law providing for the licensing of Nursing Home Administrators and shall have the force and effect of Law.

B. Every rule, regulation, order and directive adopted by the Board shall state the date on which it takes effect and a copy thereof signed by the President of the Board and the Secretary of the Board shall be filed as a public record in the office of the Board and as may be required by Law.

C. The Rules and Regulations of the Board are intended to be consistent with the applicable Federal and State Law and shall be reviewed, whenever necessary, to achieve such consistency.

D. In the event that any provision of these Rules and Regulations is declared unconstitutional or invalid, or the application thereof to any person or circumstance is held invalid, the applicability of such provision to other persons and circumstances and the constitutionality or validity of every other provision of these Rules and Regulations shall not be affected thereby.

E. These Rules and Regulations shall not affect pending actions or proceedings, civil or criminal, but the same may be prosecuted or defended in the same manner and with the same effect as though these Rules and Regulations had not been promulgated.

F. The Board shall furnish copies of these Rules and Regulations and Amendments thereof for a fee set by the Delaware Division of Professional Regulation, except, the Board may, at its discretion, provide one free copy to each nursing home, health related organization, educational institutions, State or Federal Government units and other public or noncommercial agencies or concerns.

G. Amendments to these Rules and Regulations of the Board shall be made only at a regularly called meeting thereof by a majority vote of all members of the Board. No amendment shall be acted upon unless said amendment was presented at a prior meeting and unless notice has been given to the members of the Board that said amendment is to be acted upon at a particular meeting of the Board.

H. These Rules and Regulations shall take effect the first day of December, 1982.

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code,  
Section 3506(a)(1) (24 Del.C. 3506(a)(1))

**Order Adopting Rules and Regulations**

AND NOW, this 10th day of January, 2000, in accordance with 29 Del.C. §10118 and for the reasons stated hereinafter, the Board of Examiners of Psychologists of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

**Nature of the Proceedings**

The Board proposes to amend an existing rule, Rule 5.1.1.3, by adding a provision requiring prior approval by the Board before an applicant can sit for the Examination for Professional Practice in Psychology (EPPP). This proposed rule addition is promulgated pursuant to the Board's authority under 24 Del.C. §§3506(a)(1) and 3506(a)(4). The purpose of the proposed addition to Rule 5.1.1.3 is to require candidates for the EPPP examination to submit all application materials to the Board for its review and approval prior to sitting for the examination. Notice of the public hearing on the Board's proposal was published in the Delaware Register of Regulations on November 1, 1999 and in two Delaware newspapers of general circulation, all in accordance with 29 Del.C. §10115. The public hearing was held as noticed on December 6, 1999. The Board deliberated and voted on the proposed rule following the public hearing at the December 6, 1999 meeting. This is the Board's Decision and Order ADOPTING the addition to Rule 5.1.1.3 as proposed.

**Evidence and Information Submitted at Public Hearing**

The Board received no written comments in response to the notice of its intention to adopt the proposed rule addition. No members of the public attended the December 6, 1999 public hearing. One document was marked as a Board exhibit at the hearing: a copy of a June 9, 1999 letter from the Association of State and Provincial Psychology Boards (ASPPB) to the Board which outlined ASPPB's requirement that only candidates approved for licensure be allowed to take the EPPP exam in Delaware.

**Findings of Fact and Conclusions**

As outlined in the preceding section, the public was given the required notice of the Board's intention to adopt a regulation and was offered an adequate opportunity to provide the Board with comments on the proposed

regulation. The Board concludes that its consideration of the proposed Rule and Regulation is within the Board's general authority to promulgate regulations under 24 Del.C. §3506(1). Additional statutory authority for the Board's adoption of the rule addition is found at 24 Del. C. §3506(4) which specifically requires that the Board "shall adopt the administration, grading procedures and passing score of the Association of State and Provincial Psychology Boards (ASPPB) . . . ."

ASPPB, as explained in its letter of June 9, 1999 to the Board, permits only approved candidates for licensure to sit for the EPPP examination. ASPPB expressed concern with the Board's current procedure of reviewing licensure applications after the examination, which conflicts with ASPPB policies. ASPPB also expressed concern about risks to exam security under the current procedures. The Board is bound by statute to adopt the administration procedures of ASPPB with regard to exam administration. As a result of this, and because of the Board's concerns over proper examination procedure and exam security, the Board believes that the proposed rule will ensure compliance with ASPPB's requirements, ensure that only qualified candidates sit for the examination in Delaware, and enhance exam security.

In summary, the Board concludes that the proposed addition to its Rules and Regulations is necessary for the enforcement of 24 Del.C. Chapter 35, and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulation as proposed is in the best interest of the citizens of the State of Delaware, particularly those persons who are the direct recipients of services regulated by the Board. The Board, therefore, adopts the proposed addition to Rule 5.1.1.3, as set forth in Exhibit "A" attached hereto.

**Order**

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Examiners of Psychologists, IT IS HEREBY ORDERED THAT:

1. The proposed addition to Rule and Regulation 5.1.1.3 is approved and adopted in the exact text attached hereto as Exhibit "A".
2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware Register of Regulations, pursuant to 29 Del.C. §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

By Order of the Board of Examiners of Psychologists  
(as authenticated by a quorum of the Board):

Edward S. Wilson, Ph.D., President, Professional Member

Constance Dancu, Ph.D., Vice-President,  
Professional Member  
Sharon L. Mitchell, Ph.D., Secretary, Professional Member  
Peter B. Appel, Ph.D., Professional Member  
Bobby Benjamin, Public Member  
Kulendu Bole, Public Member  
Shirley Reichelt, Public Member  
William Ulmer, Jr., M.Ed., Professional Member

### Board of Examiners of Psychologists

#### 1.0 General Rules and Regulations

The Board of Examiners of Psychologists has been established under the 24 **Del.C.** Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

#### 2.0 Official Board Office

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

#### 3.0 Meetings of the Board

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

#### 4.0 Officers of the Board

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the

President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

#### 5.0 Procedures for Licensure

##### 5.1 Application - Initial Licensure

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** 3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** 3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 **Del.C.** 3508(a)(4)]

5.1.1.5 The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

##### 5.2 Application - By Reciprocity

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 **Del.C.** 3511, shall submit evidence that he/she meets the following

requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP) by achieving the passing score, as required by their state of original licensure.

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

## 6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 **Del.C.** 3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

## 7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral

internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under Section 3519(e). For those individuals the accrual of 3,000 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

#### 8.0 Failure to Pass Examination

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

#### 9.0 Psychological Assistants

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e). This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be



provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 **Del.C.** 3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological

assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

#### 10.0 Continuing Education

10.1 Psychologists must obtain 40 hours of continuing

education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each

credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

**11.0 Professional Conduct**

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 **Del.C.** 3514.

**12.0 Complaint Procedures**

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 **Del.C.** 8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 **Del.C.** Chapter 101.

12.2 Complaints must be filed, in writing, with the Division of Professional Regulation.

**13.0 License Renewal**

Renewal notices will be mailed in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. Continuing education requirements must be fulfilled as detailed in Section 10 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. Should any psychologist fail to renew and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

**14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware**

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 **Del.C.** 3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have completed the doctoral degree at the time employment commences consistent with 24 **Del.C.** 3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure

for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements commences with the initial date of employment. The six-year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7 of the Rules and Regulations.

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**DEPARTMENT OF EDUCATION**

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

**Regulatory Implementing Order****K-12 Comprehensive Health Education and Family Life Education****I. Summary of the Evidence and Information Submitted**

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation K-12 Comprehensive Health Education and Family Life Education Policy, pages A-39-41 in the Handbook for K-12 Education. The amended regulation retains most of the elements found in the original regulation but no longer requires the school districts to submit a separate plan for their health education program. The title has been changed and now focuses on comprehensive health education as including family life education. The amended regulation also recognizes the relationship of HIV and Drug and Alcohol Education to the district's Consolidated Application planning and evaluation process. The regulation pulls together the Federal, State and DOE requirements for a comprehensive K-12 health education program and includes the relationship of those programs to the consolidated grant process.

Notice of the proposed amendment was published in the News Journal and the Delaware State News on December 13, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. Findings of Fact**

The Acting Secretary finds that it is necessary to amend this regulation because the regulation needs to be updated and also to remove an additional and separate planning activity from the work of the local school districts.

### III. Decision to Amend the Regulation

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

### IV. Text and Citation

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

### V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on January 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 20th day of January, 2000.  
Department of Education  
Valerie A. Woodruff, Acting Secretary of Education

Approved this 20th day of January, 2000.  
State Board of Education  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

### AS APPEARS IN THE HANDBOOK FOR K-12 EDUCATION

#### 8. ~~K-12 COMPREHENSIVE HEALTH EDUCATION AND FAMILY LIFE EDUCATION POLICY~~

~~The purpose of this policy is to provide a framework for a K-12 Comprehensive Health Education and Family Life Education Program that establishes a foundation for understanding the relationships between personal behavior and health.~~

~~a. Each school district shall have in place by September 1, 1990 a Comprehensive Health Education and Family Life Education Program that includes the following~~

~~minimum hours of instruction:~~

~~(1) In grades K-4, a minimum of thirty (30) hours in each grade of Comprehensive Health Education and Family Life Education of which ten (10) hours, in each grade, must address Drug/Alcohol Education.~~

~~(2) In grades 5 and 6, a minimum of thirty-five (35) hours in each grade of Comprehensive Health Education and Family Life Education of which fifteen (15) hours, in each grade, must address Drug/Alcohol Education.~~

~~(3) In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of Comprehensive Health Education of which fifteen (15) hours, in each grade, must address Drug/Alcohol Education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of Drug/Alcohol Education must be provided in the other grade.~~

~~(4) In grades 9-12, one-half (1/2) credit of Comprehensive Health Education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address Drug/Alcohol Education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of Drug/Alcohol Education must be provided for all students.~~

~~b. Each school district shall have in place by September 1991 a written plan describing their K-12 Comprehensive Health Education and Family Life Education Program.~~

~~(1) The plan shall be submitted to the Department of Public Instruction for review and approval by July 1, 1991. Any changes or revisions to the approved district plan shall be submitted to the Department of Public Instruction, Improvement and Assistance Branch, as they occur. The approved plan should be updated at least every five years. The plan shall:~~

~~(a) identify a district level person to coordinate the district program and a coordinator in each building to carry out the district program at the building level.~~

~~(b) identify a district advisory committee composed of teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and any others interested in the areas of health, family life and substance abuse issues. (This committee may also serve as the Advisory Committee for the Federal Drug Education Project proposal. Names of the members are to be submitted each year with the Federal Drug Education Project proposal.)~~

~~(c) describe the course content and activities for the required hours as described in Part I.~~

~~(d) incorporate the health education content standards for grades K-12 inclusive of sex education and an HIV prevention program that promotes abstinence.~~

~~(e) describe the Drug/Alcohol Education program for each grade K-12.~~

(f) describe how Family Life Education concepts can be implemented through the current Health Education and Home Economics Programs in each school and through other appropriate subject areas.

(g) describe the family life component which is required in the content standards for middle level Exploratory Homemaking Programs with emphasis on parenting and life management skills.

(h) describe the family life component of the Home Economics Programs provided at the high school level based on the Vocational Home Economics Content Standards with emphasis on parenting and life management skills.

(i) describe the staff development component for Drug/Alcohol Education. Three (3) or more hours of staff training and development are required for each teacher providing Drug/Alcohol Education at each grade K-12.

(j) describe those specific staff development components which address the areas of HIV Prevention, Sex Education and Family Life Education.

(k) describe the method used to evaluate the effectiveness of the program.

(2) The Department of Public Instruction will provide technical assistance to each school district in developing its plan and in providing the three (3) required hours of staff development in Drug/Alcohol Education.

(3) The Department of Public Instruction will monitor the implementation of each district's plan through a review of the plan, monitoring visits and other data as deemed necessary.

(State Board Approved September 1987, Revised July 1990)

### AS AMENDED

#### 800.25 K-12 COMPREHENSIVE HEALTH EDUCATION PROGRAM

1.0. Each school district shall have a sequential, skill-based K-12 Comprehensive Health Education Program that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:

1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level.

1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the District Consolidated Application Planning Committee.

1.3 The use of the state content standards for health education for grades K-12 inclusive of the core concepts:

alcohol and other drugs, injury prevention, nutrition, physical activity, family life and sexuality, tobacco, emotional health, personal and consumer health and community and environmental health with minimum hours of instruction as follows:

1.3.1 In grades K-4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug/alcohol education.

1.3.2 In grades 5 and 6, a minimum of thirty-five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug/alcohol education.

1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education of which fifteen (15) hours, in each grade, must address drug/alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug/alcohol education must be provided in the other grade.

1.3.4 In grades 9-12, one-half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug/alcohol education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug/alcohol education must be provided for all students.

1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high-risk behaviors.

1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through family and consumer science/home economics courses.

1.6 An annual staff development plan that describes the use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self-management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.

1.7 A description of the method(s) used to implement and evaluate the effectiveness of the program which shall be reported every three years as part of the Quality Review for Ensuring School and Student Success.

**Regulatory Implementing Order**

Administration for Delaware School Districts.

**Repeal of Regulations from the Handbook of Personnel Administration for Delaware School Districts****V. Effective Date of Order****I. Summary of the Evidence and Information Submitted**

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the following regulations from the Handbook of Personnel Administration for Delaware School Districts.

Delayed Certification, pages 7-1 and 7-2 in the Handbook of Personnel Administration for Delaware School Districts, should be repealed because it is addressed in Chapter 4, A3, page 24, Receipt of Credentials for Persons in the Delaware Public School System, in the General Regulations of the Manual for Certification of Public School Personnel.

Sub Standard Certification, pages 7-1 and 7-2 in the Handbook of Personnel Administration for Delaware School Districts, should be repealed because it is now called a Temporary Certificate and is found in Chapter 2, A 4, Page 12, in the General Regulations of the Manual for Certification of Public School Personnel.

Provisional Certificate, page 7-2 in the Handbook of Personnel Administration for Delaware School Districts, should be repealed because the certificate no longer exists.

Notice of the proposed repeal of these regulations was published in the News Journal and the Delaware State News on December 13, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. Findings of Fact**

The Acting Secretary finds that it is necessary to repeal these regulations because Sub-standard Certification and Provisional Certificate are already listed in the Handbook of Personnel Administration for Delaware School Districts as described above and the Provisional Certificate no longer exists.

**III. Decision to Repeal These Regulations**

For the foregoing reasons, the Acting Secretary concludes that it is necessary to repeal these regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby repealed.

**IV. Text and Citation**

The text of the regulations repealed hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be removed from the Handbook of Personnel

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on January 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 20th day of January, 2000.

Department of Education

Valerie A. Woodruff, Acting Secretary of Education

Approved this 20th day of January, 2000.

State Board of Education

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

**Repeal Of Regulations From The Handbook Of Personnel Administration For Delaware School Districts**

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal the following regulations from the Handbook of Personnel Administration for Delaware School Districts:

Delayed Certification, pages 7-1 and 7-2, is addressed in Chapter 4, A3, page 24, Receipt of Credentials for Persons in the Delaware Public School System, in the General Regulations of the Manual for Certification of Public School Personnel.

Sub-Standard Certification, pages 7-1 and 7-2, is now called a Temporary Certificate and is found in Chapter 2, A4, page 12, in the General Regulations of the Manual for Certification in Public School Personnel.

Provisional Certificate, page 7-2, is no longer a valid regulation.

**As Appears in the Handbook of Personnel Administration for Delaware School Districts**

~~Delayed Certification — If all credentials have not been received by the State Department of Public Instruction within one month after beginning service, the applicant shall be paid on the substitute teachers' salary basis until he is properly certificated. The salary will then be determined on the basis of education, experience and military service, and~~

~~certificate status and will be made retroactive to the time of beginning service. (State Board of Education regulation, June 14, 1972)~~

~~Sub-Standard Certification — The table below shows the salary to be paid or the deductions from salary to be made, whichever is applicable, on account of the various substandard certificates:~~

~~General Certification Salary~~

~~Emergency 80% of the salary set forth for the position~~

~~Provisional 90% of the salary set forth for the position~~

~~(State Board of Education regulation, December 16, 1971)~~

~~Trade & Industry Certification~~

~~Emergency salary for the position minus \$400~~

~~Provisional salary for the position minus \$200~~

~~(State Board of Education regulation, June 14, 1972)~~

~~Provisional Certificate — In any case where the State portion of a salary is drawn from several sections of 14 Delaware Code, Chapter 13, or any other salary provision, the portion of the salary to be paid to persons holding the provisional certificate shall be applied to the total salary paid as authorized by any section or combination of sections in the law.~~

~~(State Board of Education regulation, June 11, 1973)~~

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## Regulatory Implementing Order

### Amendments to Regulations from the Handbook of Personnel Administration for Delaware School Districts

#### I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks to amend the following four regulations from the Handbook for Personnel Administration for Delaware School Districts: Teacher Work Day, Professional Employees Strikes, Administrator Contracts, and Permanent File of School Districts.

700.5 Teacher Work Day from pages 11-10 and 11-11 has been amended to remove the technical assistance language and add clarity to the regulation.

700.6 Professional Employee Strikes from pages 6-1 and 6-2 has been amended to remove the technical assistance language and to clearly include in a single regulation the part passed in February 1976 and the part passed in May of 1979. Language has also been added to 1.2 as follows, “unless such

dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine”.

700.7 Administrator Contracts from pages 8-1 to 8-3 has been amended to eliminate the Del. C. references and the technical assistance and to add clarity by bringing the elements together in a more coherent fashion. The wording has also been changed to reflect the specific language used in the sample contract developed by the Department of Education as per Del. C., Title 14, Section 1094.

700.8 Permanent Files of School Districts from pages 5-1 to 5-2 has been amended to reflect changes in the way vacation leave is handled and to make the numbering system conform to that of other regulations. The language in 1.7.1 has also been changed to remove the reference to microfilming as a means for keeping records. This allows for the use of the current technology for preserving records.

Notice of the proposed amendments to the regulations was published in the News Journal and the Delaware State News on December 13, 1999, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements but communications were received from the Delaware State Education Association and the Chief School Officers Association on item 700.5 and from the Colonial School District on Items 700.5, 700.6, 700.7 and 700.8. The three letters are attached.

In response to the concerns expressed in the letters received the following decisions were made concerning the amended regulations.

#### Item 700.5 Teacher Work Day

The Colonial School District wants the teacher work year converted to hours in order to reflect the pupil calendar, which is stated in instructional hours (Title 14, Section 1049). This concern had been expressed before and is again an issue because pending legislation is recommending adding additional days to the teachers’ work year. The Department will convene a work group to deal with the issue. DSEA expressed a concern with the phrase in the regulation, “plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school”. DSEA has recommended deleting the phrase because it is addressed in the local school district contracts. The Chief School Officers want to keep this phrase in the regulation and add an additional phrase stating that “Teachers are legally bound to perform such activities as may be reasonably assigned by the district board of education”. The Acting Secretary is recommending that the State Board approve the regulation as initially proposed.

#### Item 700.6 Professional Employees Strikes

The phrase, “unless dues are deducted pursuant to a court order entered for the purpose of securing the payment

of a contempt fine” suggested by the Colonial School District has been added to 1.2 of the regulation.

#### Item 700.7 Administrator Contracts

The wording of the regulation has been revised to specifically reflect the original language in the DOE approved Contract for Administrators and this wording specifically mentions the local district board’s right to appoint a hearing officer in contract disputes in response to the Colonial School District’s concern. The revised wording does not change the intent of the regulation.

#### Item 700.8 Permanent Files of School Districts

The Colonial School District recommended adding additional types of record keeping beyond microfilming to reflect today’s technology. The concern has been addressed by referring to “secured copies of records” and not mentioning microfilming thus leaving the means of storing the records to be defined by the technology available.

### II. Findings of Fact

The Acting Secretary finds that it is necessary to amend these regulations in order to remove the Del. C. references and the technical assistance language and to update the references to reflect present practice.

### III. Decision to Amend the Regulations

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

### IV. Text and Citation

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

### V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on January 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 20th day of January, 2000.

Department of Education

Valerie A. Woodruff, Acting Secretary of Education

Approved this 20th day of January, 2000.

State Board of Education

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

### AS AMENDED

#### 700.5 Teacher Work Day

1.0 Teacher Work Day – ~~In compliance with 14 Del. C., Section 1305(e) the Secretary of Education shall define a teacher’s work day~~ [A teacher’s work day shall be] a minimum of 7 1/2 hours, inclusive of lunch, plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (14 Del. C., Section 1305(e) defines the number of teacher work days per year and 14 Del. C., Section 1328 defines the duty free period.)

#### ~~700.6 Employee Leave~~

~~1.0 Sick Leave – Sick leave accumulated by an employee of any state agency shall be transferred when said employee begins subsequent employment in a school district.~~

~~1.1 Adjustments for employees who terminate service prior to the end of the school year shall be made in the final paycheck.~~

~~2.0 Vacation Leave – Accumulated vacation leave shall be paid upon termination of employment. The employee may either remain on the regular payroll until such time as all vacation time is exhausted, or a lump sum payment may be made for all unused vacation time on the employee’s final paycheck. Accumulated vacation time shall not be transferred between different employing state agencies.]~~

#### 700.~~7~~ [6] Professional Employee Work Stoppage or Strike

1.0 If it is determined that illegal activity such as a work stoppage or strike has taken place, the local board shall:

1.1 Adopt a resolution informing the exclusive negotiating representative that the employee organization has violated the terms of 14 Delaware Code, Section 4011, and that the certification of such organization as the



exclusive representative will be revoked at a time to be determined by the board of education:

1.2 Refrain from making payroll deductions for the dues of any employee organization, which violated the law unless such dues are deducted pursuant to a court order entered for the purpose of securing the payment of a contempt fine:

1.3 Deduct salary for unexcused absence in accordance with 14 Delaware Code, Section 1320:

1.4 Execute items 1.2 and 1.3 above in the preparation of the next regular payroll:

1.5 Require a medical certificate for each employee absent claiming sick leave during the period of the strike.

2.0 As a part of any settlement following a strike or work stoppage, the local board shall not enter into any direct or implied agreement, which would permit school days lost because of the strike to be rescheduled. Similarly, the local board shall not agree to extend the school year or to request such an extension from the Secretary of Education.

700.~~8~~ [7] School Administrator Contracts/Agreements

~~1.0 Nonrenewal of the Existing Contracts~~

~~1.1 Failure on the part of either the administrator or the employing board to notify the other in writing by certified mail no later than six months prior to the end of the contract, of either party's intent not to renew the contract will automatically result in one year's extension of the existing contract.~~

~~2.0 Termination of a Contract with an Administrator in the Middle of the Contract Period~~

~~2.1 Termination of a contract with administrators may occur by mutual consent of both parties or by action of the employing Board for good and just cause provided the Board does not arbitrarily call for dismissal, but does serve the administrator with written performance evaluation and a fair hearing before the Board.~~

~~2.2 Failure on the part of the administrator to comply with the conditions specified in the contract may result in suspension or revocation of the administrator's certificate by the Secretary of Education with right of appeal to the State Board of Education.]~~

[1.0 Duties of a School Administrator

1.1 The Administrator shall faithfully perform those duties which may be assigned by the local Board and shall serve the School District in a professional manner. The Administrator shall observe and comply with the laws of the State of Delaware and with the regulations of the State Department of Education and the local Board as currently in force and as from time to time amended, enacted or promulgated.

2.0 Nonrenewal of the Existing Contracts/Agreements

2.1 Failure on the part of the local Board or the Administrator to notify the other in writing by certified mail, no later than six (6) months prior to the expiration of the Agreement, of either party's intent not to renew the Agreement, will automatically result in a one year extension of the existing Agreement.

3.0 Termination of a Contract with a School Administrator Prior to Expiration of the Agreement

3.1 The Administrator shall not vacate his or her position during the term of this Agreement without the written consent of the local Board.

3.2 The local Board shall not terminate the Contract, prior to the expiration date, except for good and just cause and shall provide the opportunity for a fair hearing before the local Board or before a Hearing Officer designated by the local Board. Prior to any hearing in regard to the termination of the Administrator, the local Board shall serve the Administrator with a written statement of the reasons for termination.

3.3 If the local Board designates a Hearing Officer to conduct such a hearing, a majority of the local Board shall convene to review the record of the proceedings before the Hearing Officer and the Hearing Officer's report and recommendation to the local Board, and within fifteen (15) days of the hearing before the Hearing Officer, shall submit to the Administrator its decision in writing.

3.4 If the Administrator chooses to be represented by legal counsel, all legal expenses incurred by the Administrator in connection with any termination hearing shall be borne by the Administrator.

3.5 Appeal from a decision of the local Board concerning the provisions of the Agreement may be made to the State Board of Education.]

700.8 Permanent File of School Districts

1.0 The Del. C., Title 14, Section 122 (b)(13) requires local school districts to assure the permanent maintenance of personnel records of all employees in the school districts of the State for a period of not less than 40 years. The records must include but are not limited to all annual salaries and sick leave and vacation information. The following definitions shall apply and the following procedures shall be observed:

1.1 "Employee" shall in this case mean any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

1.2 "Termination" in this case does not refer only to retirement but to any reason for the employee to leave the district.

1.3 Records for all currently employed persons shall at all times be kept up to date.

1.4 Salary data records shall be for each year of

employment in the particular school district. (Total salary paid identified as fiscal or calendar year.)

1.5 The record shall show a statement concerning sick leave days earned and used under 14 Delaware Code, Section 1318, showing the number of days available at any time.

1.6 The record of vacation time for those employees whose terms of employment provide for earned vacation.

1.7 In compliance with the provisions of the statute herein referred to, each school district shall keep at least the above referenced information concerning each employee ever employed by the district and this material shall be kept on file for at least forty years following termination and preferably on a permanent basis.

1.7.1 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district for three (3) years after termination of an employee and a successful audit of such records. Records are to be purged according to Bureau of Archives and Records Management instructions. A secured copy of the ~~microfilmed~~ record[s] is to be retained permanently at the State Archives with a copy going back to the school district. A second option is that a school district may retain employee personnel records at the agency for three (3) years and successful audit of these records and then have these records placed on ~~microfiche~~ [a secured system] and updated annually. The secured copy of the records would be retained permanently at the State Archives with a copy going back to the school district. The original documents are then to be destroyed.

1.7.2 The style and form of the presentation of material shall be at the discretion of the local school district except that materials presented to the Division of Historical and Cultural Affairs are to be grouped first by district, second by year or block of years, and within the year or years alphabetically.

1.7.3 The information referred to above shall be maintained and shall be available at the school district level for any employee or former employee seeking that information for a period extending forty years beyond termination in that district. (It is recommended that for the convenience of employees and former employees that school districts develop a card or other indexed alphabetically arranged file showing the name of each employee and the disposition of his or her records.)

## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE

#### DELAWARE STATE LOTTERY OFFICE

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

#### Order

Pursuant to 29 Del. C. §4805(a), the Delaware State Lottery Office hereby issues this Order regarding proposed amendments to the Video Lottery Regulations. Following notice and a request for public comments, the Lottery makes the following findings and conclusions:

#### Summary of Evidence and Information Submitted

1. The Lottery posted public notice of the proposed amendments in the Register of Regulations on December 1, 1999 and in the News-Journal and Delaware State News. The Lottery proposed to amend several provisions of the existing Video Lottery Regulations. Regulation 2.0 as amended would amend the definition of "technology provider" to include vendors providing services to the video lottery agents or the Lottery. Regulations 4.1 and 4.2 as amended would clarify the licensing process for technology providers to be consistent with the proposed amendment to Regulation 2.0. Regulation 5.1 would be amended to reference the applicable section of the procurement law in title 29, chapter 69. Regulation 5.2 would be amended to include new Regulations 5.2.1 and 5.2.2. The proposed amendments would reorder the existing Regulation to clarify the contractual provisions for technology providers who do or do not manufacture video lottery machines. Regulation 5.11 regarding technology provider duties would be amended to require: i) supervision of employees in compliance with Lottery rules; ii) prompt reporting of violations of laws to the Lottery; and iii) compliance with all other requirements specified by the Director. Regulation 6.35 would be amended to require video lottery agents to file with the Director copies of all video lottery related contracts in excess of \$1,000 and to notify the Director of any contract with a vendor subject to the Lottery's licensure requirements. Regulation 8.2 would be amended to add new Regulations 8.2.1 through 8.2.5. Regulation 8.2.1 and 8.2.2 would require video lottery agents to file financial reports as required by the Lottery. Regulation 8.2.3 would require video lottery agents to prepare annual financial statements. Regulation 8.2.4 would allow the Lottery to prescribe the reporting forms to be used by the video lottery agents for reporting purposes. Regulation 8.2.5 would specify that the video lottery agents must meet the minimum requirements of the Lottery's internal control procedures.

2. On December 15, 1999, the Lottery received a letter

from Laura J. Waterland, Esquire of the Disabilities Law Program of Community Legal Aid Society, Inc. commenting on the proposed amendments. The Disabilities Law Program suggested an amendment to Regulation 5.1 to add language requiring that a technology provider's video lottery machines be accessible to people with disabilities. As an alternative, the submission suggested language that the machines supplied under contract meet current industry designs as required by state and federal law. Ms. Waterland also proposed amendment of Regulation 5.2.1(6) to provide that the Director shall not certify machines that are not accessible by people with disabilities or that video lottery machines meet current industry designs for accessibility.

3. On December 22, 1999, the Lottery conducted a public hearing at the Lottery Office. The Lottery received no public comments at that hearing. On December 29, 1999, the Lottery received a letter from Robert Osgood, the Chairperson of the Delaware State Council for Persons with Disabilities. Mr. Osgood recommended further amendment of the definition of "technology provider" to require the Lottery assess video lottery machines to certify accessibility. Mr. Osgood recommended the addition of a sentence to the end of Regulation 5.1 or Regulation 5.2.1(6) to essentially provide that video lottery machines be accessible to persons with disabilities, or in the alternative, accessible as permitted by current industry design.

On December 29, 1999, the Lottery received a letter from Michael Vautrin and Anthony Casdia of Midway Slot and Simulcast, Harrington, DE. The submission stated that the proposed Regulation 6.35 did not specify if the Lottery had to approve the vendor for suitability prior to the exchange of goods or services. The submission also commented that the \$1,000 notification level was too low and should be raised to \$50,000, with a possible narrowing of the scope of the definition of goods and services. The submission also proposed that with regard to Regulation 8.2.5, the Lottery's "internal controls should be included in detail as part of the regulations and made available for public comment."

### **Findings of Fact**

4. The public was given notice and an opportunity to provide the Lottery with comments on the proposed Regulations. The evidence received by the Lottery is summarized in paragraphs #2-3.

5. The Lottery received no comments or objections to the proposed amendments to Regulations 2.0, 4.1, 4.2, 5.11, 6.35, 8.2.1, 8.2.2., 8.2.3, or 8.2.4. The Lottery finds the proposed amendments necessary and desirable for the operation of the Lottery and will adopt the Regulations as proposed.

6. The Lottery has considered the written comments from the Disabilities Law Program and the Delaware State

Council for Persons with Disabilities concerning the proposed amendments to the Regulation 5.1 and 5.2. The Lottery proposed an amendment to Regulation 5.1 to simply amend the Regulation to reference the most recent statutory change to the State procurement laws in 29 Del. C. chapter 69. The proposed amendment to Regulation 5.2 simply reordered the Regulation to distinguish the contractual duties for technology providers and video lottery machine manufacturers. Neither of the proposed amendments to Regulations 5.1 or 5.2 are substantive in nature. The proposed written comments from Mr. Osgood and Ms. Waterland basically requested that the technology provider regulations be amended to provide that video lottery machines be accessible or accessible as permitted by current industry design. As proposed, these written comments go beyond the scope of the original proposal to amend Regulations 5.1 and 5.2. The written comments do not object to the proposed amendments to Regulations 5.1 and 5.2 and the Lottery concludes that the Regulations should be adopted as proposed.

The proposal suggested by the written submissions would require the Lottery to renote a proposed change and conduct another public hearing. The Lottery believes this issue requires further study in order to determine if additional regulations are necessary. The Lottery will determine the status of current industry design standards for accessibility of video lottery machines and further consider the proposed amendments on this subject.

### **Conclusions**

9. The proposed amendments were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del. C. §4805(a). The Lottery concludes the proposed amendments are necessary for the effective enforcement of 29 Del. C. §4805 and for the full and efficient performance of the Lottery's duties thereunder. The Lottery concludes that the proposed amendments are consistent with the overall purpose of the Lottery's Video Lottery Regulations. The Lottery concludes that the proposed amendments are necessary to provide for a complete and workable set of Regulations in this area. The Lottery concludes that the adoption of the proposed amendments to the Regulations would be in the best interests of the citizens of the State of Delaware and consonant with the dignity of the State and general welfare of the people under §4805(a).

10. The Lottery will adopt the proposed Amended Regulations pursuant to 29 Del. C. §4805 and 29 Del. C. §10118. On proposed Regulation 8.2.5, the proposed Regulation contains a typographical error and the Lottery will insert the word "meet" in place of the word "met." The Lottery has considered the written comments of the public prior to issuance of this Order. A copy of the adopted

amendments to the Regulations is attached as exhibit #1 and incorporated as part of this Order.

11. The effective date of this Order shall be ten (10) days from the date of publication of the Order in the Register of Regulations on February 1, 2000.

IT IS SO ORDERED this 10th day of January, 2000

Wayne Lemons, Director  
Delaware State Lottery Office

### Final Amendments to Video Lottery Regulations

#### 2.0 Definitions

“technology provider” – any person or entity, including video lottery manufacturers, who propose seeks to contract with a video lottery agent or the agency for the provision of goods or services, including management services, related to video lottery operations, the provision of which require a license pursuant to 29 Del. C. chapter 48.

#### 4.0 Licensing of Technology Providers

....

4.1 As deemed necessary, the Director shall give public notice of the agency’s intent to select technology providers of video lottery machines through a request for proposal and qualifications by advertising in a newspaper of general circulation in Delaware and in a prominent trade publication requesting expressions of interest to serve as a technology provider. The licensing of a technology provider shall not serve as the basis of requiring the Director to select the technology provider under the procurement procedures set forth in chapter 69 of title 29 of the Delaware Code.

4.2 Each person desiring to obtain a license from the agency as a technology provider ~~for video lottery games~~ shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:

(1) Give notice that the applicant may be required to submit to a background investigation, the cost of which must be borne by the applicant...

#### 5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the Lottery, or convenience of the players, and in accordance with the agents’ business plans as approved and amended by

the Director. No single technology provider shall provide more than 65% of the total number of video lottery machines at the premises of any agent. No more than 1,000 video lottery machines shall be located within the confines of an agent’s premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2.1 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

(1) The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent’s site;

(2) The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of Twenty Five Dollars (\$25) shall be permitted for wagering on a single play of any video game;

(3) For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any such damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider’s expense;

(4) Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines, and shall provide the Director with keys and locks subject to the Director’s specifications for each approved video lottery machine;

(5) The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

(6) No video lottery machine shall be put into use prior to certification of its model by the Director.

5.2.2 All contracts with technology providers shall

include without limitation, provisions to the following effect:

(1) Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director; ~~provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine.~~

(2) Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time.

(3) Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve.

(4) Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.11 The following duties are required of all licensed technology providers, without limitation:

....

(15) Supervise its employees and their activities to ensure compliance with these rules.

(16) Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

(17) Comply with such other requirements as shall be specified by the Director.

#### **6.0 Agents: Duties**

The following duties are required of all licensed agents:

....

6.35 As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor, manufacturer or other person who stands to benefit financially from the possession or use of video lottery machines by such agent. The agent shall file with the Director for approval every contract in excess of \$1,000 which pertains to the agent's video lottery operations. The agent shall notify the Director of any contract with an entity that is subject to the license requirements for vendors or technology providers under 29 Del. C. §4805(17) and

Chapter 4 of these Regulations.

#### 8.0 Accounting and Distribution Procedures

...

8.2 Each agent and technology provider shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify. For purposes of this and other information, each agent shall have a computer on the premises which is suitable for the purpose.

8.2.1 Each agent, unless specifically exempted by the Agency, shall file weekly, monthly, quarterly and annual reports of financial reports and statistical data in a format specified by the Director. The data may be used by the Agency to evaluate the financial position and operating performance of individual video lottery agents and to compile information regarding the performance and trends of the video lottery industry in the State of Delaware.

8.2.2 Each agent, unless specifically exempted by the Agency, shall at its own expense, cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice in the State of Delaware.

8.2.3 The annual financial statement shall be prepared on a comparative basis for the current and prior fiscal year, and shall present the video lottery agent's present financial position and results of operations in conformity with generally accepted principles.

8.2.4 The Agency may periodically prescribe a set of standard reporting forms and instructions to be used by each video lottery agent for filing the weekly, monthly, and quarterly reports.

8.2.5 Each video lottery agent and technology provider, unless specifically exempted by the Agency, shall conduct its video lottery operations to meet the minimum requirements set forth in the Agency's Video Lottery Internal Control Procedures.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

In the Matter Of:

Revision of the Regulations  
Of the Medicaid/medical  
Assistance Program

**Nature of the Proceedings:**

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to eligibility policies for Low-Income Medicare Beneficiaries, Non-IV-E Adoption Subsidy Children and the Delaware Healthy Children Program. 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 November 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 1999, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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

**Findings of Fact:**

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

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective February 10, 2000.

Gregg C. Sylvester, M.D., Secretary  
January 13, 2000

**13444 Qualified Medicare Beneficiaries (QMB)**

Effective January 1990, Delaware began to pay Medicare co-insurance and deductible amounts for Medicare beneficiaries with income that does not exceed less than 100% of poverty. ~~and resources up to two times the SSI program resource standard.~~

**13445 Specified Low Income Medicare Beneficiaries (SLMB)**

Beginning January 1, 1993, Medicaid will pay the Medicare Part B premium for these individuals who have income that does not exceed 120% of poverty. ~~and who have resources that do not exceed twice the SSI standard.~~ They do not receive any Medicaid services.

**13447 Qualifying Individuals**

Two new mandatory eligibility groups of low income Medicare beneficiaries were established by the Balanced Budget Act of 1997. The first group (QI-1s) have income between 120% and 135% of FPL and are eligible to have their Part B premiums paid by Medicaid. The second group (QI-2s) have income between 135% and 175% of FPL and receive a direct payment from Medicaid for the small portion of Part B premium that was transferred from Part A. ~~Resources for both QI-1s and QI-2s must not exceed twice the SSI resource standard.~~ Funding for these groups come out of the Medicare Trust fund and are not out of Medicaid's federal funding. The state receives 100% FFP for the premiums for these groups.

**17300 Qualified Medicare Beneficiaries**

A Qualified Medicare Beneficiary (QMB) is someone who is entitled to hospital insurance benefits under Part A Medicare and whose income does not exceed the Federal Poverty Level. ~~and whose resources are at or below twice the SSI resource standard.~~ All resources of the applicant and spouse are excluded when determining eligibility.

QMB's qualify for Medicaid to pay their Medicare Part A and B premiums, deductibles, and co-insurance expenses. They do not receive any Medicaid services.

This category of eligibles is mandated for coverage by the Medicare Catastrophic Coverage Act of 1988 (MCCA). Delaware Medicaid implemented the program effective 1/1/90. The eligibility and benefits are not retroactive.

**17300.3.2.5 Unearned Income**

Unearned income is income that is paid because of a legal or moral obligation rather than for work activity performed. It is all income that is not earned income. This includes Social Security, Railroad Retirement, pensions, benefits, ~~interest, dividends,~~ alimony, child support and other types of payments. Interest and dividend income is excluded.

Rental income is unearned unless the rental proceeds are ordinary income of a trade or business being carried on by a self-employed individual, such as a real estate broker.

See the Long Term Care Section for more information on determining net rental income and more types of unearned income. (DSSM 20000 )

### 17300.3.3 Resources

The resource limit is twice the SSI (Supplemental Security Income) limit. The couple limit is used even if one spouse is ineligible for Medicare. Federal regulations mandate that in determining resources we must use the methodologies used in the SSI program. We will follow these basic guidelines in determining resources:

The term "resources" means things a person owns. It includes real estate and personal property, such as cash, savings and checking accounts, certificates of deposit, stocks and bonds, life insurance, and other assets that can be applied to meet a person's needs for food, clothing, or shelter.

The total value of resources owned by either spouse counts toward the resource limit.

#### 17300.3.3.1 Excluded Resources

Following are some of the most common items that are excluded in determining the amount of a person's resources for QMB purposes:

1. A home (and adjacent land) which a person owns and makes his or her principal place of residence, regardless of its value.
2. Personal effects and household goods.
3. A car, regardless of value, if for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's home):
  - a) it is necessary for employment,
  - b) it is necessary for medical treatment of a specific or regular medical problem,
  - c) it is modified for operation by or transportation of a handicapped person, or
  - d) it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.

NOTE: Only one car may be excluded per married couple.

4. Jointly owned vehicle if co-owner refuses to sell
5. Life insurance policies with a total face value of \$1,500 or less per person.
6. Burial plots or spaces regardless of value, if intended for use by a person or his or her immediate family.
7. Burial funds set aside for an individual or his/her spouse, up to \$1,500 each.
8. Any resources that were transferred or given away. Transfer of Assets Policy applies only to institutionalized applicants and recipients.

NOTE: Please see the Long Term Care Section for further explanation of countable resources, excluded resources, burial resources, property ownership and conditional benefits while attempting to sell a resource. (DSSM 20000)

### 15430 Adoption Subsidy Children

Section 9529 of P.L. 99-272, the Consolidated Omnibus Reconciliation Act of 1985, permits states to extend Medicaid services to children with special medical or rehabilitative needs whose adoptive families are receiving a subsidy under a state (non-IV-E) adoption agreement.

Effective 7/1/87, the Delaware Medicaid program added coverage for state-funded adoption subsidy children. Eligibility criteria are:

- 1) Must have an adoption assistance agreement in effect with DSCYF. Children coming into Delaware must have an adoption assistance agreement in effect with the former state.
- 2) Must receive a medical/psychological subsidy from DSCYF.
- 3) Must have been Medicaid eligible prior to adoption assistance agreement.

### 18700.5 Cancellation of Coverage for Nonpayment of Premiums

Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. A notice of cancellation will be sent to the family advising the family to report any change in circumstances, such as a decrease in income, that may result in eligibility for Medicaid. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.

Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. Families who are cancelled for nonpayment of premiums cannot reenroll for six months from their coverage end date. There is no automatic reenrollment at the end of the six month cancellation period. The family must initiate reenrollment and must pay an initial premium. Families who are cancelled for nonpayment of premiums may reenroll at any time without penalty, with the reenrollment period starting with the first month for which the premium is paid.

Eligibility redeterminations will be processed without regard to the families' enrollment status.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF FISH AND WILDLIFE**

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

**Amendments to Tidal Finfish Regulation Nos. 4, 7, 10,  
23, 25 and 26  
Order No. 2000-F-0003**

**Order**

**Summary of the Evidence and Information**

Pursuant to due notice 3:6 Del. R. 830-831, the Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulations pertaining to summer flounder, striped bass, weakfish, black sea bass, sharks and shad in order to remain in compliance with their fishery management plans, as amended, adopted by the Atlantic States Marine Fisheries Commission. The Atlantic Coastal Fisheries Cooperative Management Act (1993) requires coastal states to comply with fishery management plans adopted by the Atlantic States Marine Fisheries Commission.

The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation No. 4 to adjust the fishing season closure dates, creel limits and minimum size limits on summer flounder in 2000 to reduce the recreational landings by 41% relative to the number of summer flounder landed in 1998.

The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation Nos. 6 and 7 to adjust the fishing season, creel limits and minimum size limits of striped bass in order to reduce the fishing mortality of striped bass over 28 inches by 14% in 2000.

The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation No. 10 to change the 1999 dates when it is unlawful to take weakfish with any gear other than a hook and line in the Delaware Bay and Ocean to the corresponding dates in 2000.

The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation No. 23 to reduce the commercial quarterly trip limits on black sea bass in order to prevent the quarterly quota from being exceeded and prolong each quarterly fishery.

The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish

Regulation No. 25 to place a minimum size limit of 54 inches on large coastal, pelagic and small coastal sharks and reduce the recreational creel limit to one per vessel. It also proposed to place 14 more sharks on the prohibited list.

The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation No. 26 to prohibit the possession of any shad taken from the Nanticoke River in order to restore the spawning population of shad.

A public workshop was held on October 19, 1999 to discuss the above proposals.

A public hearing was held on December 21, 1999 on the above proposals.

**Finding of Fact:**

I find the following facts from testimony and evidence presented:

**Summer Flounder**

- The State of Delaware must comply with the requirements of the Fishery Management Plan for Summer Flounder approved by the Atlantic States Marine Fisheries Commission.
- Delaware must reduce its recreational landings in 2000 by number by 41% relative to the 1998 Delaware landings.
- The coast wide option, based on a coast wide data set, is the most liberal option relative to any option that uses a Delaware data set.
- Closing the recreational summer flounder season in the summer months adversely impacts the socio economics of the head and charter boat fishery, the bait and tackle dealers and tourism in Delaware.
- Summer flounder over 16 inches are relatively scarce in Delaware during the summer, other than deep water.

**Striped Bass**

- The State of Delaware is required to reduce landings of striped bass that measure 28 inches or greater by 14% in 2000 according to the Fishery Management Plan for Striped Bass approved by the Atlantic States Marine Fisheries Commission.
- Delaware landed 2.7% of the total coast wide landings of striped bass in 1998.
- Fishing for striped bass in the upper Delaware Bay and Delaware River is most popular in the late spring and summer.
- Fishing for striped bass in the lower Delaware Bay and Ocean is most popular in the fall.
- New Jersey and Delaware fishermen mostly fish in



the same vicinity at the month of Delaware Bay.

- New Jersey, at this time, has not decided what option they will implement to reduce their landings by 14%.
- 80% of Delaware's striped bass landings occur in September, October, November and December.

#### **Weakfish**

- The Fishery Management Plan for Weakfish approved by the Atlantic States Marine Fisheries Commission does not require any changes in Delaware for 2000.

#### **Black Sea Bass**

- The Fishery Management Plan for Black Sea bass adopted by the Atlantic States Marine Fisheries Commission requires Delaware to reduce the quarterly trip limit for commercial fishermen in order to prolong each quarterly fishing period.

#### **Sharks**

- The Federal Fishery Management Plan (FMP) for Atlantic Sharks lists 19 sharks on the prohibited list.
- The FMP established a recreational creel limit of one shark per vessel. The FMP established a minimum size limit of 54 inches for large and small coastal sharks and pelagic sharks.
- Delaware Bay is a nursery area for sand tiger sharks and sandbar sharks.

#### **Shad**

- The American shad spawning population in the Nanticoke River is depleted.

#### **Conclusions:**

##### **Summer Flounder**

- Delaware must implement regulations that reduce the landings by number of summer flounder by 41% relative to the 1998 landings.
- Delaware should not have a closed summer flounder recreational fishing season during the summer.
- Delaware should implement regulations that are similar to New Jersey's to avoid confusion to anglers fishing in the Delaware Bay.
- The coast wide option should minimize any adverse impact to the recreational fishing industry in

Delaware.

#### **Striped Bass**

- Any one of Delaware's three options that would reduce the fishing mortality of striped bass 28 inches and greater in size and that were approved by the Atlantic States Marine Fisheries Commission will not be popular with some recreational fishermen in Delaware.
- New Jersey and Delaware should have similar regulations to govern the recreational striped bass fishery in the Delaware estuary to avoid fishermen showing a preference for either state.
- A minimum size limit greater than 28 inches will adversely affect the charter boat recreational fishery in the lower Delaware Bay.
- Any recreational Spring closure will adversely affect the charter boat fishery in the lower Delaware Bay.
- The commercial striped bass fishery should be reduced 14% for fish over 28 inches in length.
- The selection of an option to reduce the recreational fishery 14% for striped bass over 28 inches should be delayed until New Jersey decides its option for reducing their recreational fishery by 14%.

#### **Weakfish**

- The 34 calendar dates for days when it is unlawful to harvest weakfish with any gear other than a hook and line should be changed from 1999 to the corresponding dates in 2000.

#### **Black Sea Bass**

- Delaware should implement the quarterly trip limits to prolong the quarterly commercial fishery during each quarter.

#### **Sharks**

- Delaware should implement regulations to compliment the Federal Fishery Management Plan for Atlantic Sharks since Delaware Bay is a nursery area for the sand tiger and sandbar sharks.

#### **Shad**

- Delaware should close the Nanticoke River to the harvest of shad to compliment the efforts of Maryland in restoring the spawning population of American shad in that river system.

**Recommendations****Summer Flounder**

- An amendment to the Tidal Finfish Regulation pertaining to summer flounder should be adopted by DNREC to implement the coast wide option.

**Striped Bass**

- An amendment to the Tidal Finfish Regulation pertaining to striped bass size limits should be adopted by the Department of Natural Resources and Environmental Control to implement a slot size limit of 20 to 32 inches for commercial fishermen to reduce their harvest of striped bass measuring over 28 inches by 14%.
- At this time, the Department of Natural Resources and Environmental Control should delay adopting any changes to the recreational striped bass fishing regulations until New Jersey decides on changes to its recreational striped bass fishery. At that time, the Department of Natural Resources and Environmental Control should implement similar changes that meet the 14% reduction in harvest of striped bass over 28 inches in 2000. This will minimize any preference for fishing in the Delaware Bay from either state.

**Weakfish**

- An amendment to the Tidal Finfish Regulation pertaining to weakfish should be adopted by the Department of Natural Resources and Environmental Control to change the 34 dates in 1999 when it is unlawful to harvest weakfish with any gear other than hook and line in the Delaware Bay and Ocean to corresponding dates in 2000.

**Black Sea Bass**

- An amendment to the Tidal Finfish Regulation pertaining to black sea bass should be adopted by the Department of Natural Resources and Environmental Control to adjust the quarterly trip limits in order to prolong quarterly commercial fisheries.

**Sharks**

- An amendment to the Tidal Finfish Regulation pertaining to sharks should be adopted by the Department of Natural Resources and Environmental Control to implement a one shark

per vessel possession limit and a 54 inch minimum size limit for certain sharks and also add fourteen small and large coastal and pelagic sharks to the prohibited list.

**Shad**

- An amendment to the Tidal Finfish Regulation pertaining to shad should be adopted by the Department of Natural Resources and Environmental Control to prohibit the harvest of any shad from the Nanticoke River.

**Order**

It is hereby ordered this 6<sup>th</sup> day of January in the year 2000 that amendments to Tidal Finfish Regulation Nos. 4, 7, 10, 23, 25 and 26, copies of which are attached hereto, are adopted pursuant to 7 Del.C. §903 (e)(2)(a) and 7 Del.C. §903 (e)(3) and are supported by the Departments findings of evidence and testimony received. This Order shall become effective on February 10, 2000.

Nicholas A. DiPasquale, Secretary

**FINAL AMENDMENTS TO TIDAL FINFISH  
REGULATIONS**

**TIDAL FINFISH REGULATION NO. 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.**

a) It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the period beginning at 12:01 AM ~~on July 16 and ending at midnight on August 7.~~ ~~[(Note: Some period(s) of time in the spring and/or fall may be closed; the dates to be decided after the public hearing).]~~ **[on January 1 and ending at midnight on May 9 and during the period beginning at 12:01 AM on October 3 and ending at midnight on December 31.]**

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~eight (8)~~ ~~[(Note: The creel limit may change depending on the season closure)]~~ **[eight (8)]** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~fifteen (15)~~ ~~[(Note: This size may change depending on the season closure)]~~ **[fifteen and one-half (15.5)]** inches

between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~fifteen (15)~~ ~~[(Note: The size may change depending on the season closure)]~~ **[fifteen and one-half (15.5)]** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~eight (8)~~ ~~[(Note: The creel limit may change depending on the season closure)]~~ **[eight (8)]** summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

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

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational

fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measures less than ~~twenty-eight (28)~~ ~~[thirty (30)]~~ **[twenty-eight (28)]** inches in total length.

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

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~28 inches~~ ~~[thirty (30)]~~ **[twenty-eight (28)]** total length, unless said striped bass is in one or more of the following categories:

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

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

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

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

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

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

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

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than ~~twenty-eight (28)~~ ~~[thirty (30)]~~ **[twenty-eight (28)]** inches in total length.

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

**TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.**

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than fourteen (14) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than fourteen (14) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than fourteen (14) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of fourteen (14) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 1, ~~1999~~ 2000 and ending at midnight on May 9, ~~1999~~ 2000;

beginning at 12:01 AM on May ~~14, 1999~~ 12, 2000 and ending at midnight on May ~~16, 1999~~ 14, 2000;

beginning at 12:01 AM on May ~~21, 1999~~ 19, 2000 and ending at midnight on May ~~23, 1999~~ 21, 2000;

beginning at 12:01 AM on May ~~28, 1999~~ 26, 2000 and ending at midnight on May ~~30, 1999~~ 28, 2000;

beginning at 12:01 AM on June ~~4, 1999~~ 2, 2000 and ending at midnight on June ~~6, 1999~~ 4, 2000;

beginning at 12:01 AM on June ~~11, 1999~~ 9, 2000 and ending at midnight on June ~~13, 1999~~ 11, 2000;

beginning at 12:01 AM on June ~~18, 1999~~ 16, 2000 and ending at midnight on June ~~20, 1999~~ 18, 2000;

and beginning 12:01 AM on June 24, ~~1999~~ 2000 and ending at midnight on June 30, ~~1999~~ 2000."

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of fourteen (14) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than fourteen (14) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of fourteen (14) weakfish.

**TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS**

a) It shall be unlawful for any person to have in possession any black sea bass *Centropritis striata* that measures less than ten (10) inches, total length.

b) Is omitted intentionally.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the following quantities of black sea bass during the quarter listed:

First Quarter (January, February and March) - ~~11,000 lbs.~~ 9000 lbs.

Second Quarter (April, May and June) - ~~7,000 lbs.~~ 3000 lbs.

Third Quarter (July, August and September) - ~~3,000 lbs.~~ 2000 lbs.

Fourth Quarter (October, November and December) - ~~4,000 lbs.~~ 3000 lbs.

"One trip" shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware."

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter indicated in subsection (c) after the date in said quarter that the National Marine Fisheries Services determines that quarter's quota is filled."

**TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS**

(a) Definitions:

(1) Fillet shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

(2) Land or Landing shall mean to put or cause to

go on shore from a vessel.

(3) Management Unit shall mean any of the large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

(4) Large coastal species shall mean any of the following species of sharks or parts thereof:

- Great hammerhead, *Sphyrna mokarran*
- Scalloped hammerhead, *Sphyrna lewini*
- Smooth hammerhead, *Sphyrna zygaena*
- White shark, *Carcharodon carcharias*
- Nurse shark, *Ginglymostoma cirratum*
- ~~Bignose shark, *Carcharhinus altimus*~~
- ~~Blacktip shark, *Carcharhinus limbatus*~~
- ~~Bull shark, *Carcharhinus leucas*~~
- ~~Caribbean reef shark, *Carcharhinus perezii*~~
- ~~Dusky shark, *Carcharhinus obscurus*~~
- ~~Galapagos shark, *Carcharhinus galapagensis*~~
- ~~Lemon shark, *Neqapriion brevirostris*~~
- ~~Narrowtooth shark, *Carcharhinus brachyurus*~~
- ~~Night shark, *Carcharhinus signatus*~~
- ~~Sandbar shark, *Carcharhinus plumbeus*~~
- ~~Silky shark, *Carcharhinus falciformis*~~
- ~~Spinner shark, *Carcharhinus brevipinna*~~
- ~~Tiger shark, *Galeocerdo cuvieri*~~

(5) Small coastal species shall mean any of the following species of sharks or parts thereof:

- ~~Atlantic angel shark, *Squatina dumerili*~~
- ~~Bonnethead, *Sphyrna tiburo*~~
- ~~Atlantic sharpnose shark, *Rhizoprionodon terraenovae*~~

~~terraenovae~~

- ~~Blacknose shark, *Carcharhinus acronotus*~~
- ~~Caribbean sharpnose shark, *Rhizoprionodon porosus*~~

~~porosus~~

- ~~Finetooth shark, *Carcharhinus isodon*~~
- ~~Smalltail shark, *Carcharhinus porosus*~~

(6) Pelagic species shall mean any of the following species of sharks or parts thereof:

- ~~Bigeye sixgill shark, *Hexanchus vitulus*~~
- ~~Sevengill shark, *Heprtranchias perlo*~~
- ~~Sixgill shark, *Hexanchus griseus*~~
- ~~Longfin mako, *Isurus paucus*~~
- ~~Porbeagle shark, *Lamna nasus*~~
- ~~Shortfin mako, *Isurus oxyrinchus*~~
- ~~Blue shark, *Prionace glauca*~~
- ~~Oceanic whitetip shark, *Carcharhinus longimanus*~~

~~longimanus~~

- ~~Bigeye thresher, *Alopias superciliosus*~~
- ~~Thresher shark, *Alopias vulpinus*~~

(7) Prohibited species shall mean any of the following species of sharks or parts thereof:

- Basking shark, *Cetorhinidae maximus*
- White shark, *Carcharodon carcharias*
- Bigeye sand tiger, *Odontaspis noronhai*

- Sand tiger, *Odontaspis taurus*
- Whale shark, *Rhincodon typus*
- Bignose shark, *Carcharhinus altimus*
- Caribbean reef shark, *Carcharhinus perezii*
- Dusky shark, *Carcharhinus obscurus*
- Galapagos shark, *Carcharhinus galapagensis*
- Narrowtooth shark, *Carcharhinus brachyurus*
- Night shark, *Carcharhinus signatus*
- Atlantic angel shark, *Squatina dumerili*
- Caribbean sharpnose shark, *Rhizoprionodon*

porosus

- Smalltail shark, *Carcharhinus porosus*
- Bigeye sixgill shark, *Hexanchus vitulus*
- Sevengill shark, *Heprtranchias perlo*
- Sixgill shark, *Hexanchus griseus*
- Longfin mako, *Isurus paucus*
- Bigeye thresher, *Alopias superciliosus*

(b) It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

(c) It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing sand shark unless said fins are naturally attached to the body of said shark.

(d) It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated and the head removed prior to landing said shark.

(e) It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

(f) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than ~~two~~ one sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

(g) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce.

(h) It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

(i) It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any large coastal shark, any pelagic shark or any small coastal shark that measures less than 54 inches, fork length.

**TIDAL FINFISH REGULATION NO. 26, AMERICAN SHAD AND HICKORY SHAD, CREEL LIMITS"**

(a) It shall be unlawful for any person who does not have a valid commercial food fishing license to have in possession more than an aggregate of ten (10) American shad and hickory shad at or between the place caught and his/her personal abode or transient place of lodging."

b) It shall be unlawful for any person to take and reduce to possession any American shad or hickory shad from the Nanticoke River or its tributaries.

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 2017 (7 Del.C. 2017)

**Re: Amendments to Shellfish Regulations Nos. S-52, S-53, S-54, S-58 and new Shellfish Regulation S-61**

**Order No.99-F-0068**

**Order****Summary of the Evidence and Information**

Pursuant to due notice 3:5 Del. R. 622-623, The Department of Natural Resources and Environmental Control proposed to amend Shellfish Regulations pertaining to Horseshoe Crabs to prohibit commercial eel fishermen and their alternates from assisting commercial horseshoe crab collectors and visa versa. The Department also proposed to prohibit commercial eelers and commercial horseshoe collectors from commingling their harvests of horseshoe crabs. Commercial eelers were proposed to not be authorized to collect horseshoe crabs at night. A daily limit on commercial horseshoe crab collectors was proposed if shellfish regulation S-58, Horseshoe Crab Containment and Transportation Restrictions is stricken.

A public workshop was held on October 12, 1999 to discuss options for separating commercial eelers and commercial horseshoe crab collectors and their harvests. Striking the vehicle size restrictions for transporting horseshoe crabs was discussed. Unauthorized persons assisting commercial horseshoe crab collectors also was discussed.

A public hearing was conducted on December 14, 1999 on proposed amendments to shellfish regulations and a new shellfish regulation to make it unlawful for commercial eelers and their alternates to assist commercial horseshoe crab collectors and visa versa, to prevent commercial eelers and horseshoe crabs from commingling their catches of horseshoe crabs, to prevent unauthorized persons from assisting commercial horseshoe crab collectors load and

handle horseshoe crabs near the beaches where horseshoe crabs are harvested, to prohibit the harvest of horseshoe crabs at night by commercial eelers, to strike shellfish regulation No. S-58 and implement a possession limit of 300 cubic feet of horseshoe crabs.

**Finding of Fact:**

- Some Commercial horseshoe crab collectors and Commercial eel fisherman and their alternates commingle their harvests of horseshoe crabs to disguise the disposition of said horseshoe crabs.
- Commercial eel fishermen are not authorized to sell any horseshoe crabs.
- Some commercial eel fishermen sell horseshoe crabs.
- Unauthorized persons assist commercial horseshoe crab collectors in loading, handling and driving vehicles on the beach where horseshoe crabs are collected.
- Limits on the capacity of vehicles to transport horseshoe crabs is not enforceable.
- Some commercial eel fishermen and their alternates harvest horseshoe crabs at night.
- The harvest of horseshoe crabs from the beaches in Delaware during their spawning season is not allowed to exceed the number landed in 1998; estimated to have been 350,000.

**Conclusions:**

I have reached the following conclusions relative to proposed amendments to shellfish regulations pertaining to horseshoe crabs.

- A Commercial horseshoe crab collector should not be an alternate to a commercial eel fishermen while collecting horseshoe crabs. (SR-52 (b)).
- Persons, 16 years old or older, should not assist commercial horseshoe crab collectors in the driving of a vehicle, loading or handling of horseshoe crabs in the immediate vicinity of the beach where said horseshoe crabs are collected or the point where they are landed. One thousand feet is excessive. Three hundred feet is adequate (SR-53 (b)).
- A Commercial eel fisherman's alternate should be listed on the license by the DNREC before assisting or collecting horseshoe crabs for said commercial eel fisherman (SR-54(c)).
- Any person who is both a licensed commercial horseshoe crab collector and a licensed commercial eel fisherman should be considered a commercial horseshoe crab collector while collecting horseshoe crabs. No one, 16 years of age and older, is

authorized to assist a commercial horseshoe crab collector. Commercial eelers are authorized to have their alternates assist them (SR-54 (d)).

- Commercial eel fisherman and commercial horseshoe crab collectors or commercial horseshoe crab dredgers should not mix their harvested horseshoe crabs in order to sell horseshoe crabs collected by the commercial eeler (SR-54 (e)) and (SR-54 (f)).
- The possession limit of 300 cubic feet of horseshoe crabs will impose no greater limit on the current amount of horseshoe crabs one can load on a truck. (SR-54 (g)).
- Commercial eelers should not be authorized to collect horseshoe crabs at night. This is consistent with the law that prohibits the taking of shellfish for commercial purposes between sunset and sunrise (SR-61)).

#### **Recommendations:**

The DNREC should maintain the landings of horseshoe crabs collected from the beaches to 350,000 per year to be consistent with the provisions of the FMP for Horseshoe Crabs.

Commercial eelers and Commercial horseshoe crab collectors should not be allowed to assist each other or commingle their harvest in order to lessen the possibility of commercial eelers selling any horseshoe crabs.

A possession limit on horseshoe crabs of 300 cubic feet should be implemented.

The current Shellfish Regulation, S58 Horseshoe Crab Containment and Transportation Restrictions should be stricken.

#### **Order**

It is hereby ordered, this 28th day of December that amendments to shellfish regulations Nos. S-52, S-53, S-54 and S-58 and a new shellfish regulation S-61, copies of which are attached hereto, are adopted pursuant to §2701, 7 Del. C. and are supported by the Departments findings on the evidence and testimony received. This Order shall become effective on February 10, 2000.

Nicholas A. DiPasquale, Secretary

#### **Shellfish Regulation No. S-52 Requirement for Collecting Horseshoe Crabs for Persons under 16**

a) It shall be unlawful for any person under the age of sixteen (16) years to possess more than six (6) horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

b) It shall be unlawful for any person with a valid horseshoe crab collecting permit to collect any horseshoe crabs as an alternate to a person with a valid commercial eel fishing license.

#### **Shellfish Regulation No.S-53 Number of Persons Accompanying a Person with a Valid Horseshoe Crab Collecting Permit**

a) It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons who are not required to have valid horseshoe crab commercial collecting permits.

b) It shall be unlawful for any person 16years of age or older who does not have a valid [commercial] horseshoe crab collecting permit, to assist any person with a valid [commercial] horseshoe crab collecting permit in the handling, loading or ~~transporting of~~ [driving a vehicle used to transport] horseshoe crabs collected by said horseshoe crab collecting permittee while within ~~1000~~ [300] feet of the shoreline of the water from which said horseshoe crabs ~~were~~ [are] collected ~~for landed~~ [or the point on shore where said horseshoe crabs are landed.]

#### **Shellfish Regulation No. S-54 Possession Limit of Horseshoe Crabs, Exceptions**

a) Unless otherwise authorized, it shall be unlawful for any person to possess more than six (6) horseshoe crabs, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

b) Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has filed all required reports of his/her and his/her alternate's previous month's harvest of horseshoe crabs with the Department in accordance with S-57. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state."

(c) It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as [the] alternate.

(d) Any person with both a valid commercial eel fishing license and a valid [commercial] horseshoe crab

collecting permit shall be considered as a [commercial] horseshoe crab collecting permittee for purposes of enforcing the provisions of chapter 27, 7 Del. C. and/or shellfish regulations pertaining to horseshoe crabs.

(e) It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

(f) It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid [commercial] horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

**[g) It shall be unlawful for any person to possess more than 300 cubic feet of horseshoe crabs except in a stationary cold storage or freezer facility.]**

**~~Shellfish Regulation No. S 58 Horseshoe Crab Containment and Transportation Restrictions~~**

~~(a) It shall be unlawful for any person to put, place, contain or cause to be contained any horseshoe crabs in any enclosure, container or facility, other than cold storage or a freezer, that contains more than 300 cubic feet of storage space.~~

~~(b) It shall be unlawful for any person to transport or cause to be transported any horseshoe crab in any vehicle or trailer that contains more than 300 cubic feet of storage space."~~

**Shellfish Regulation No. 61 Collecting Horseshoe Crabs at Night, Prohibited**

(a) It shall be unlawful for any person with a valid commercial eel fishing license to collect horseshoe crabs between sunset and sunrise.



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-TWO**

To: Heads of All State Departments, Agencies and Authorities, and All Political Subdivisions and Governmental Units of the State of Delaware

Re: State Employees and the Right to Organization and Effective Union Representation

WHEREAS, in accordance with state and federal law, state employees have the right of organization and union representation;

WHEREAS, experience in the public and private sector indicates that fully protecting the right to participate in employee organizations contributes to fair and effective human resource policies and programs;

WHEREAS, the decision to organize must rest with state employees and management should not seek to intervene or influence such decisions;

WHEREAS, state employees must be afforded the opportunity to make such decisions, free of undue influence from management;

WHEREAS, it is the policy of this Administration to strictly observe the right of state employees to organize and engage in collective bargaining;

WHEREAS, it is the policy of this State to ensure that employees have access to information provided by employee organization representatives and other bargaining unit representatives concerning union representation and collective bargaining;

WHEREAS, it is important that state employee union representatives be afforded the opportunity to fully represent their members; and

WHEREAS, state employee union representatives should be afforded the opportunity to make formal presentations before the Budget Director so that state employee concerns are given full consideration.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of Delaware, do hereby order and declare that:

1. Managers and supervisors shall not interfere or otherwise hinder state employee efforts to exercise their right to organize for purposes of collective bargaining.

2. It is the policy of this State to maintain a neutral position as to whether employees become involved in an organizing campaign.

3. Managers and supervisors shall not express any

view, argument, or opinion on employee organization or collective bargaining except to:

(1) publicize the fact of a union representation election and encourage employees to vote; and

(2) inform employees of the requirements of this executive order relating to labor management relations and representation.

4. The distribution of literature and solicitation of employees during working hours in violation of the Public Employee Relations Act is strictly prohibited. State agencies shall authorize such activity in non-work areas, during non-work hours when the activity does not otherwise interfere with operations, provided that such authorization is otherwise consistent with state and federal law.

5. State employee union representatives shall be afforded the opportunity to make presentations to the Budget Director at public hearings held pursuant to 29 Del.C. §6332.

Approved this 30<sup>th</sup> day of December, 1999.  
Thomas R. Carper, Governor

Attest:  
Edward Freel, Secretary of State

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-THREE**

To: Heads of All State Departments, Agencies and Authorities, and All Political Subdivisions and Governmental Units of the State of Delaware

Re: Reallocation of State Private Activity Bond Volume Cap for Calendar Year 1999 and Initial Suballocation of State Private Activity Bond Volume Cap for Calendar Year 2000

WHEREAS, pursuant to 29 Del.C. §5091, the State's private activity bond volume cap ("Volume Cap") for 1999 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Fifty-Seven, \$75,000,000 of the Volume Cap for 1999 which had been allocated to the State of Delaware was further suballocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of Volume Cap in Executive

Order Number Fifty-Seven is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 1999 and 2000 is allocated among the various State and local government issuers by 29 Del.C. §5091(a); and

WHEREAS, Kent County has reassigned \$4,700,000 of its unallocated Volume Cap for 1999 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$5,945,000 of its unallocated Volume Cap for 1999 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has reassigned \$37,500,000 of its unallocated Volume Cap for 1999 to the Delaware State Housing Authority; and

WHEREAS, pursuant to 29 Del.C. §5091(b), the State's \$75,000,000 Volume Cap for 2000 is to be suballocated by the Governor among the Delaware State Housing Authority, the Delaware Economic Development Authority and other governmental issuers within the State; and

WHEREAS, the Secretary of Finance recommends (i) that the \$10,645,000 unallocated Volume Cap for 1999 reassigned to the State of Delaware by other issuers be suballocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$37,500,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be suballocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's \$75,000,000 Volume Cap for 2000 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$10,645,000 of unallocated Volume Cap for 1999 that has been reassigned by other issuers to the State of Delaware is hereby reassigned to the Delaware State Housing Authority for carry forward use, in addition to the \$37,500,000 previously suballocated to the Delaware State Housing Authority for 1999 under Executive Order Fifty-Seven and the \$37,500,000 of unallocated Volume Cap for 1999 that has been reassigned by the Delaware Economic Development Authority, for a total carry forward amount of \$85,645,000.

2. The \$75,000,000 allocation to the State of Delaware of the 2000 Volume Cap is hereby suballocated \$37,500,000 to the Delaware State Housing Authority and \$37,500,000 to the Delaware Economic Development

Authority.

3. The aforesaid suballocations have been made with due regard to actions taken by other persons in reliance upon previous suballocations to bond issuers.

Approved this 29th day of December, 1999  
Thomas R. Carper, Governor

Attest:  
Edward Freel, Secretary of State

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-FOUR**

To: Heads of All State Departments, Agencies and Authorities, and All Political Subdivisions and Governmental Units of the State of Delaware.

RE: Implementation of the Recommendations of the Water Supply Task Force; Appointment of Temporary Water Coordinator; Establishment of a Water Supply Coordinating Council.

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

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

WHEREAS, on August 26, 1999, by Executive Order Number Sixty-Five, I established a Water Supply Task Force (herein after referred to as "the Task Force") and charged that body with reviewing Delaware's current and projected water supply along with current and projected demand;

WHEREAS, the Task Force was further charged with providing recommendations to the Governor concerning long-term solutions to northern New Castle County's water supply needs, both in terms of normal weather conditions and severe drought condition;

WHEREAS, The Task Force met on September 14, October 1, October 21, November 5, and November 18, 1999, and submitted a final report (herein after referred to as "the Report") to the Office of the Governor on December 2, 1999, containing, among others, the following recommendations:

1. "Appoint an interim or temporary water master, or

central coordinator who would obtain input from, facilitate, mediate, and interface with the water providers to ensure that the "A" list of committed to projects and possibly the "B" list projects are implemented according to an agreed upon schedule without slippage."

2. "Appoint a Water Supply Coordinating Council composed of State, Regional, New Castle County officials and the five water providers to work with the water master or coordinator to implement the water supply options."; and

WHEREAS, Given the severity of the drought experienced in northern New Castle County during the summer of 1999, steps must be taken to ensure that the recommendations of the Task Force are implemented as soon as possible so that Delaware is better prepared for future droughts;

NOW THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby proclaim as follows:

A. Establishment of Temporary Water Coordinator for Northern New Castle County.

1. The Water Resources Agency (WRA) at the University of Delaware is hereby designated as the "Temporary Water Coordinator" pursuant to the recommendations of the Task Force. The WRA shall oversee the implementation of short-term water supply enhancement projects as documented in the Report.

2. The Delaware Geological Survey (DGS) and the Department of Natural Resources and Environmental Control (DNREC) shall work with the WRA to ensure timely implementation of the projects listed in the Report, and shall assist the WRA in preparing a regular summary on the progress of the water supply projects identified in the Report to the Governor and the General Assembly.

3. Said summary shall be prepared no less than two times per year, with the first such summary being submitted to the Governor and the General Assembly on or before May 31, 2000.

4. The designation of the WRA as Temporary Water Coordinator, and the duties conferred upon it by this Executive Order shall cease as of December 31, 2000.

B. Establishment of a Temporary Water Supply Coordinating Council.

1. A Water Supply Coordinating Council (herein after referred to as "the Council") is hereby established.

a) The Council shall have the following membership:

- i. The Secretary of DNREC;
- ii. The Secretary of the Department of Agriculture
- iii. A representative of the Office of the Governor;
- iv. The Director of the Delaware Public Service Commission;
- v. The Director of the Delaware

Emergency Management Office;

vi. The Director of the Delaware Division of Public Health;

vii. The Delaware Public Advocate

viii. The Executive Director of the Delaware River Basin Commission;

vix. A representative of the Government of New Castle County;

x. A representative of each public and private water utility serving northern New Castle County;

xi. A representative of the New Castle County Chamber of Commerce;

xii. A representative of the Delaware State Chamber of Commerce;

xiii. A representative of the Delaware Association of Nurserymen;

xiv. A representative of the Professional Grounds Management Society;

xv. A representative of the Delaware State Golf Association; and

xvi. A representative of the Delaware Nature Society.

b) Members shall serve at the pleasure of the Governor, and the Governor shall select a Chairperson.

c) Additional members shall be designated by a majority vote of the Council.

2. Consistent with the Report, the Council shall have the following duties and responsibilities:

a) Work cooperatively with the Temporary Water Coordinator to implement the short-term water supply enhancement projects;

b) Conduct hydraulic field tests and/or modeling to optimize and expand the intra-county interconnections to convey water from suppliers with excess capacity to suppliers in need of additional water to meet peak demands;

c) Encourage water providers in northern New Castle County to adopt inclining block and/or conservation water rates as a demand side management measure in a manner that does not hinder economic development in New Castle County;

d) Work with water utilities to develop cooperative cost and capacity agreements to purchase water supplies during drought;

e) Advise the DNREC and provide technical input to the recently authorized U.S. Corps of Engineers Groundwater Availability Study for Northern New Castle County; and

f) Review the policy decision made by DNREC to reserve water supply in Southern New Castle County vis-a-vis the Chesapeake and Delaware Canal Pipeline in light of the recent demand and supply analysis and the changing socioeconomic character of southern New

Castle County.

3. The Delaware Department of Natural Resources and Environmental Control, the Delaware Geological Survey and the Water Resources Agency shall provide staff support to the Council.

4. The designation of Water Supply Coordinating Council and the duties and responsibilities conferred upon it by this Executive Order shall cease as of December 31, 2000.

C. The provisions of this Order shall be effective as of January 1, 2000.

APPROVED this 30th day of December 1999.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State

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**GOVERNOR'S APPOINTMENTS**1099

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Medical Practice	Mr. Vance G. Daniels	12/14/02
Child Protection Accountability Commission	Colonel Gerald W. Pepper	Pleasure of the Governor
Council on Corrections	Dr. Glover A. Jones	001/12/03
Council on Real Estate Appraisers	Mr. William J. Tansey	12/15/02
Council on Volunteer Services	Mr. Mark T. Brainard Ms. Rachael A. Schreiber	12/15/01 11/21/01
Delaware Board of Nursing	Ms. Debora Boyle-Borkowski	12/15/02
Delaware Economic and Financial Advisory Council	Mr. John G. Goddard	Pleasure of the Governor
Delaware Institute of Medical Education & Research	Dr. Steven Selbst	12/15/02
Governor's Council on Equal Opportunity Employment	Ms. Frann S. Anderson Ms. Bernice M. Edwards Ms. Sharon W. Yarborough	Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor
Governor's Council for Exceptional Citizens	Ms. Linda M. Fleetwood	Pleasure of the Governor
Pesticide Advisory Committee	Mr. Wayne A. George, Jr.	12/15/02
Real Estate Commission of Delaware	Mr. John Giles Mr. Marvin Sachs	12/13/02 12/13/02
State Board of Veterinary Medicine	Mr. William H. Cross	12/14/02
Water Supply Coordinating Council	Mr. Robert Appleby Mr. Bruce Burcat Ms. Carol Collier Ms. Nona J. Cunane The Honorable Nicholas A. DiPasquale Mr. Joseph Dombrowski	Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor Pleasure of the Governor

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Water Supply Coordinating Council	Mr. Dan Dunkle	Pleasure of the Governor
	Ms. Lorraine Fleming	Pleasure of the Governor
	Mr. Thomas Gordon	Pleasure of the Governor
	Mr. Mark J. Headd	Pleasure of the Governor
	Mr. Richard Heffron	Pleasure of the Governor
	Mr. John P. Mulhern, Jr.	Pleasure of the Governor
	Mr. J. Curtis Riley	Pleasure of the Governor
	Mr. Kris Srinivasan	Pleasure of the Governor
	Ms. Patricia A. Stowell	Pleasure of the Governor
	The Honorable John F. Tarburton	Pleasure of the Governor
	Ms. Dian Taylor	Pleasure of the Governor
Welfare Employment Committee	Dr. Ulder J. Tillman	Pleasure of the Governor
	Ms. Nancy E. Ward, Chairperson	Pleasure of the Governor

**OFFICE OF STATE PLANNING  
COORDINATION**

January 1, 2000

Dear Friend in Planning:

At the dawn of the 21<sup>st</sup> Century, my Cabinet Committee on State Planning Issues approved a set of management strategies designed to continue my mission of improving Delaware's quality of life.

"Shaping Delaware's Future: Managing Growth in 21<sup>st</sup> Century Delaware" outlines strategies to ensure that by 2020, the First State is still a viable place to live, work and play. The initiative embraces the concept of wise development, directing new construction to where it makes the most economic, environmental and social sense – not to where it contributes to unfocused and costly sprawl. State agencies will use the strategies to coordinate state spending to revitalize existing cities and towns while protecting the environment. Furthermore, since much of Delaware's infrastructure is state-funded, local governments will benefit by linking their projects with the state's approach. The result should be the wise expenditure of taxpayer money and a sensible, efficient pattern of growth.

I am pleased that my Cabinet Committee on State Planning Issues, staffed by the Office of State Planning Coordination, steadfastly worked on these strategies with the leadership and cooperation of local government officials, civic leaders, business leaders, and other State agency planners. The stakeholders understood that Delaware's quality of life was imperiled with inaction. I commend and thank them for a unified start in protecting and preserving the First State's virtues.

Finalizing this set of strategies is yet another step in "Shaping Delaware's Future," a vision started with a land use planning conference in 1994. By amending the Quality of Life Act the following year, our counties were required to submit updated comprehensive land use plans to the State, and for the State to share its land use plans and projects with the counties.

Legislation passed in 1998 mandated that all local governments regularly convey their comprehensive plan intentions to the State, and vice versa. These events were especially important because Delaware lost 48,000 acres of farmland between 1983 and 1994, and Delaware faces a 20 percent projected population increase by 2020. Today, Delaware has permanently protected 37,000 acres of farmland – the highest percentage of any state preserved nationwide – nearly 3 percent of Delaware's total land area, and another 18,000 acres of open space greenways, nature preserves and local parks.

I've enclosed a copy of "Shaping Delaware's Future: Managing Growth in 21<sup>st</sup> Century Delaware." I hope you will read it to further understand Delaware's current land use patterns, our predicted development growth, and the resulting vision for the 21<sup>st</sup> century and beyond. The report is also available on the Office of State Planning Coordination's web site at <http://www.state.de.us/planning>.

I am proud to present you with this set of spending and management strategies designed to make Delaware a better place to live.

Sincerely,  
Thomas R. Carper, Governor

**Shaping Delaware's Future  
Managing Growth in 21<sup>st</sup> Century Delaware:  
Strategies for state policies and spending**

**All across Delaware, people are talking about growth.**

No matter how they differ, communities from center city Wilmington to downtown Dover, from historic Seaford to the beachfront resort communities, are facing the same question: How can we handle the myriad challenges that arise from the First State's phenomenal increase in population and land development?

These increases present both opportunities and problems: more jobs, but more traffic; greater housing choices, but fewer acres of farmland; a gain in shopping options, but a loss of community character; a larger pool of potential employees for businesses, but a poorer quality of life for those employees.

**The pace of change**

The mix of benefits and difficulties that result from growth are nothing new -- they have been part of the "suburbanization" of America since the 1950s, when an exodus began from urban areas (the traditional population centers) to outlying areas.

Although the pace of change was somewhat slower in Delaware, it has accelerated in recent years at a startling pace. Here are a few indicators of that growth:

- Delaware's population increased by almost 67 percent between 1960 and 1998.
- Most of that increase was in unincorporated areas, where population doubled.
- Delaware's residential areas grew by almost 50 percent between 1984 and 1992.
- Commercial and industrial uses increased by more than 60 percent during that period.
- The state lost 21 percent of its farmland to development between 1970 and 1997.

### What can we do to manage this explosive growth?

Although decisions concerning land-use remain at the local and county level, the state can influence the way development occurs through its spending and management policies. By making wise decisions about building and managing highways, water and sewer systems, and other public facilities (commonly called “infrastructure”), the state can reduce the negative effects of poorly planned, unfocused growth.

By promoting and supporting development and redevelopment in places where adequate infrastructure exists or is planned, the state can manage congestion, preserve farmland, enhance community character and protect important state resources. In short, it can preserve Delaware’s high quality of life.

To do so, state agencies have to work closely with county and municipal governments, and all parties need guidelines to help make smart land-use decisions. To that end, the Cabinet Committee on State Planning Issues has developed a set of strategies to guide state spending and policies.

### The Strategies

In workshops conducted by the Cabinet Committee on State Planning Issues, Delawareans said they want well-planned, efficient and orderly growth. Accomplishing that requires new development to be directed to where it makes the most economic, environmental and social sense. The strategies for doing so are based on common-sense distinctions between highly developed cities and towns, less developed rural areas and the developing transition zones between them. Because the types of development are so different, spending and policies for each type would also differ.

Trying to neatly fit the many, diverse areas of Delaware into a just a handful of categories is impossible, but this document will use the following broad terms as convenient shorthand for the range of developed-through-undeveloped areas:

- **Communities** -- In these areas where population is concentrated, commerce is bustling and a wide range of housing types already exists, state policies should encourage redevelopment and reinvestment. They should also increase transportation options, improve water and wastewater systems, and ensure community identity and vitality.
- **Urban centers** – In more urban, city areas, the state will pursue the same goals listed under “communities” as well as specific strategies that address the special conditions of these places with major concentrations of population and economic,

governmental, academic, and cultural activities.

- **Employment centers** – In these specially designated areas, the state will promote new economic development, and a balance between workplaces and residences.
- **Developing areas** -- In these zones between development centers and rural areas, state investments and policies will be targeted to accommodate existing development and orderly growth. State investments should link development plans to available infrastructure, encourage interconnections between developments, promote a variety of housing types and protect natural resources.
- **Environmentally sensitive developing areas** – In these areas surrounding the Inland Bays, where development is putting pressure on the both the natural environment and infrastructure such as roads, the state will seek a balance between resource protection and sustainable growth.
- **Secondary developing areas** – In these areas designated for growth by county plans, but not included in the state’s developing areas, the state will promote efficient, orderly development and the coordinated phasing of infrastructure investment, consistent with the extent and timing of future growth, and within the limitations of state financial resources.
- **Rural areas** -- In these historically open areas, state policies should encourage the preservation of a rural lifestyle and discourage new development. Spending on transportation, water and wastewater systems should be limited to what is needed to alleviate health and environmental risks and to accommodate regional trips, with little additional capacity that would encourage further development. State policies should protect farmlands and natural areas, while also promoting the revitalization and enhancement of small rural communities.

### How will these strategies be used?

The state will use these strategies to make decisions such as the allocation of new state funding for farmland preservation, road construction, open-space preservation, transportation investments, state-supported housing development, and water and wastewater financing. The strategies will also serve as a guide for review and, if necessary, revision of existing state policies. They also provide a framework for state comments on local comprehensive planning and land use decisions.

The state strategies will be useful tools for county and local governments, but they are not intended to restrict county and municipal authority in land use decisions. The



strategies will be a critical component of the information considered for county comprehensive plans, and they will be part of the state guidance for municipal planning and for intergovernmental coordination between counties and municipalities.

These strategies are not intended to replace local land use plans. The state is not determining where the counties or municipalities can or cannot exercise their responsibilities nor where they should allow or not allow development to occur. The strategies do not restrict landowners' rights to use or develop their lands nor do they restrict a purchaser's option to live anywhere desired. The strategies do create a framework for where the state will most likely allocate its resources and focus state program efforts.

The criteria that are the basis for the strategies will be continually refined, and the strategies will be reviewed and, if necessary, revised every five years.

### **Working for the future**

The Strategies for Managing Growth in 21st Century Delaware are based on these basic premises:

- State actions influence development, and affect quality of life.
- State spending should promote quality and efficiency, not sprawl.
- State policies should foster order and resource protection, not degradation.

Putting these ideas into action requires a clear vision of where development should, and should not, be directed. Using carefully thought-out strategies, the state can influence where growth occurs. County governments will be able to plan for growth with a clear understanding of where state resources will be most readily available. Municipal governments will be able to plan for the growth of their cities and towns with a clear knowledge of how the state and county governments view the areas around their borders.

People want to live in Delaware, and we all understand why. We can welcome more Delawareans, more new businesses, more new jobs, and still maintain our high quality of life -- if we plan it that way.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES**

### **Public Notice Division of Social Services**

The Delaware Health and Social Services, Division of Social Services, is requesting that information relative to Senate Bill No. 101 be published in the Delaware Register of Regulations. Senate Bill No. 101, passed into law by the 140<sup>th</sup> Delaware General Assembly, allows participants of Delaware's A Better Chance welfare reform program to engage in adult basic education, secondary education, post-secondary education and vocational training as part of the work activity requirement. This new law took effect on July 2, 1999.

### **Summary of Senate Bill No. 101:**

- Allows participants of Delaware's A Better Chance Welfare Reform program to engage in adult basic education, secondary education, post-secondary education and vocational training as part of the work activity requirement.
- Participants must be enrolled as full-time students, must be students in good standing and be required to have a combination of credit hours and work hours equaling at least 20 hours per week.
- Participants must attend accredited or approved programs and will receive the same support services while in school as do other Better Chance participants.

Section 1. Amend Chapter 5, Title 31 of the Delaware Code by adding a new Section 523, to read as follows:

Section 523. Education and training for recipients of aid under Section 505(1) of this chapter.

(a) Persons who qualify for assistance under Section 501(1) of this chapter shall be eligible to participate in secondary education, post-secondary education up to the baccalaureate level, adult basic education or vocational training as an approved work activity provided each of the following requirements are met:

1. The person does not hold a baccalaureate degree.
2. The secondary, post-secondary education up to the baccalaureate level, or vocational training is pursued through an accredited or approved school program.
3. The person is enrolled with enough credit hours to have full-time student status and is in good standing

as it relates to attendance and achievement as defined by the program the person is attending.

4. If the person attending school would otherwise be subject to a work requirement in order to receive assistance under Section 505(1) of this chapter, the combination of credit hours and work hours shall equal at least 20 hours per week while the program is in session. This work requirement may be met through work-study, internships, externships, or through work as a research assistant. If possible, during scheduled breaks, the work requirement will be the same as for other program participants, with work experience related to the field of study. However, if the student is enrolled full-time for the next semester and work activity placement cannot be arranged for the duration of the break in classes, it may be excused.

(b) Loans, scholarships, grants and work-study received by the recipient to pay for tuition and materials are excluded in determination of eligibility for assistance under Section 505(1) of this Title or the amount of assistance received by the recipient

(c) The Department of Health and Social Services shall advise all persons of this section at application interviews and, at a minimum, at each recertification appointment.

(d) Persons attending education and training programs under this section shall receive support services, such as assistance with transportation and child care, while they attend the educational or vocational training program on the same basis as support services are provided other persons who are receiving assistance under Section 505(1) of this Title.

(e) If program completion will occur within one semester or quarter after the time limit expires, an extension may be granted for that semester or quarter.

(f) Persons sanctioned while attending educational or vocational programs shall be afforded the same due process as provided other persons under Section 518 and Section 520 of this Title.

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

\* **PLEASE NOTE: THE MEETING TIME FOR THE PUBLIC HEARING REGARDING THE PROPOSED CHANGES TO THE BOARD OF ACCOUNTANCY RULES AND REGULATIONS WAS OMITTED FROM THE MEETING NOTICE PUBLISHED IN THE JANUARY 1, 2000 REGISTER (3 DE REG 850 (1/1/00)).**

**THE BOARD WILL MEET ON WEDNESDAY, FEBRUARY 23, 2000 AT 9:00 A.M. IN THE SECOND FLOOR CONFERENCE ROOM A OF THE CANNON BUILDING, 861 SILVER LAKE BOULEVARD, DOVER, DELAWARE, 19904.**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 105(1), the Delaware Board of Accountancy proposes to revise its rules and regulations. Please note that the following rules and regulations are a total rewriting and reordering of existing regulations, and will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in definitions of full and part time employment as it relates to the statutory experience requirement; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); establishes application requirements; requires demonstration of good character and education requirements prior to approval to sit for examination; clarifies statutory requirements and required documentation for permits to practice certified public accountancy and for certificate reciprocity; establishes reporting requirements and clarifies substantive requirements for continuing education credits; and establishes procedural rules pertaining to hearings before the Board. In addition, material which unnecessarily duplicates the statutes or other rules and regulations has been stricken. The rules and regulations have been entirely re-ordered and re-numbered.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, February 23, 2000 at 9:00 a.m. in the Second 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 Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

This notice will be published in two newspapers of

general circulation not less than twenty (20) days prior to the date of the hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ELECTRICAL EXAMINERS**

The Delaware Board of Electrical Examiners in accordance with 24 Del.C. Section 1406(a)(1) has proposed a comprehensive revision of its rules and regulations to implement the statutory revision that became effective July 20, 1999. The changes in part include new requirements for insurance coverage, a provision for an inactive license, requirements for continuing education, timetables for qualifications of employees of inspection agencies, clarification of licensure exceptions, proof required to substantiate required experience, reciprocity procedures, and a program for impaired professionals.

A public hearing will be held at 9:00 a.m. on March 7, 2000 in the second for conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons to submit written comments may forward these comments 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 conclusion of the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF MESSAGE AND BODYWORK**

Statutory Authority: Title 24, Delaware Code,  
Chapter 53 (24 Del.C. Chp. 53)

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 5306(1), the Delaware Board of Massage and Bodywork proposes to revise its rules and regulations. The proposed revisions define certain modalities as constituting or not constituting the "practice of massage and bodywork." The Board's Rule regarding Continuing Education has also been rewritten in its entirety, changing the number of required hours for massage therapists from 12 to 24 per biennial licensing period; clarifying content requirements and Board approval procedures; allowing credit for certain self-directed activities; establishing reporting requirements, and allowing

for hardship extensions in certain cases.

A public hearing will be held on the proposed Rules and Regulations on Thursday, March 2, 2000 at 2:00 p.m. in the Second 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 Rules and Regulations. Any written comments should be submitted to the Board in care of Denise Spear at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Denise Spear at the above address or by calling (302) 739-4522.

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

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## **DEPARTMENT OF AGRICULTURE**

The Pesticide Section proposes to amend its regulations. 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 Grier Stayton, Department of Agriculture, 2320 S. duPont Highway, Dover, DE 19901 by March 1, 2000.

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## **DEPARTMENT OF EDUCATION**

The Department of Education will hold its monthly meeting on Thursday, February 17, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES**

### **Public Notice Medicaid / Medical Assistance Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by February 29, 2000.

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### **DIVISION OF SOCIAL SERVICES**

#### **Public Notice Medicaid / Medical Assistance Program**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by February 29, 2000.