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# Delaware Register of Regulations

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Issue Date: July 1, 2004

Volume 8 - Issue 1

Pages 1-210

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## IN THIS ISSUE:

### Regulations:

Proposed

Final

### Governor

Executive Orders

### General Notices

### Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before June 15, 2004.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

**6 DE Reg.** 1541-1542 (06/01/03)

Refers to Volume 6, pages 1541-1542 of the Delaware Register issued on June 1, 2003.

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### SUBSCRIPTION INFORMATION

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is 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
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 16	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.

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# TABLE OF CONTENTS

## PROPOSED

### DELAWARE STATE FIRE PREVENTION COMMISSION

State Fire Prevention Regulations..... 6

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

2100 Board of Examiners in Optometry..... 16

### DEPARTMENT OF EDUCATION

101 Delaware Student Testing Program..... 17

106 Teacher Appraisal Process Delaware Performance  
Appraisal System (DPAS II)..... 23

107 Specialist Appraisal Process Delaware  
Performance Appraisal System (DPAS II)... .. 23

108 Administrator Appraisal Process Delaware  
Performance Appraisal System (DPAS II)... .. 23

501 State Content Standards..... 36

718 Health Examinations for School District  
Employees..... 37

805 The School Health Tuberculosis (TB) Control  
Program ..... 38

### PROFESSIONAL STANDARDS BOARD

368 Certification School Psychologist..... 41

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Assisted Living Facilities, Regulations for..... 46

#### DIVISION OF PUBLIC HEALTH

463 Licensing and Registration of Operators of Public  
Water Supply Systems..... 47

### DEPARTMENT OF INSURANCE

606, (Formerly Reg. No. 31) Proof of Automobile  
Insurance..... 55

607, (Formerly Reg. No. 37) Defensive Driving Course  
Discount Automobiles and Motorcycles..... 59

1501, Medicare Supplement Insurance Minimum  
Standards..... 62

## DEPARTMENT OF LABOR COUNCIL ON APPRENTICESHIP & TRAINING

Section 106.5, Standards of Apprenticeship..... 65

## DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

708 Establishment of a Branch Office by a Bank or  
Trust Company..... 68

## FINAL

### DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

1501 Knowledge, Skills And Responsibility Based  
Supplements For Educators..... 73

1505 Professional Growth Programs..... 78

1528 Foreign Language Teacher Comprehensive. .... 80

1529 Foreign Language Teacher Secondary..... 80

1533 Foreign Language Teacher Elementary..... 80

1537 Bilingual Teacher (Spanish) Secondary..... 80

1558 Bilingual Teacher (Spanish) Primary  
Middle Level..... 80

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Assisted Living Facilities, Regulations for..... 85

#### DIVISION OF PUBLIC HEALTH

Regulations Pertaining to the Testing of Newborn  
Infants for Metabolic, Hematologic and  
Endocrinologic Disorders..... 100

203 Cancer Treatment Program..... 107

#### DIVISION OF SOCIAL SERVICES

##### Division of Social Services Manual (DSSM)

9068.1 Certification Period Length..... 113

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Green Energy Fund Program Regulation..... 114

---

---

# TABLE OF CONTENTS

---

5

**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Reporting of a Discharge of a Pollutant or Air  
Contaminant..... 126

Dept. Of Labor, Council On Apprenticeship  
& Training, Notice of Public Hearing..... 209  
Dept. Of State, Office of the State Banking  
Commissioner, Notice of Public Hearing..... 210  
Delaware River Basin Commission, Notice of  
Public Hearing..... 210

**DIVISION OF WATER RESOURCES**

Surface Water Quality Standards..... 154

---

**DEPARTMENT OF STATE  
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**

Historic Preservation Tax Credit, Regulations  
Governing..... 194

---

## GOVERNOR

Executive Order No. 56, Establishing The Infant  
Mortality Task Force..... 199

---

## GENERAL NOTICES

**DEPARTMENT OF HEALTH AND SOCIAL  
SERVICES  
DIVISION OF SOCIAL SERVICES**

(TANF) Caseload Reduction Credit Report..... 200

---

## CALENDAR OF EVENTS/HEARING NOTICES

Fire Prevention Commission, Notice of Public  
Hearing..... 207  
Dept. Of Administrative Services, Div. of  
Professional Regulation, Board of Examiners  
in Optometry, Notice of Public Hearing..... 207  
State Board of Education Monthly Meeting Notice..... 207  
Dept. of Finance, Gaming Control Board, Notice of  
Rescheduled Public Hearing..... 207  
Dept. of Health and Social Services, Div. of Long  
Term Care Residents Protection, Notice of  
Public Hearing..... 208  
Dept. of Health and Social Services, Div. of  
Public Health, Notice of Public Hearing..... 208  
Dept. of Insurance, Notice of Public Hearing..... 208

**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.

**DELAWARE STATE FIRE  
PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code,  
Section 6603 (16 **Del.C.** §6603)

**NOTICE OF PUBLIC HEARING**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.**, §101 on Tuesday, July 20, 2004, at 1:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

2003 Delaware State Fire Prevention Regulations

- PART I, ANNEX A
- PART I, ANNEX B
- PART II, CHAPTER 6
- PART V, CHAPTERS 1 & 5
- PART VI, CHAPTER 3
- APPENDIX E

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New

Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. The webpage address is [www.delawarestatefiremarshal.com](http://www.delawarestatefiremarshal.com) under the tabs "Technical Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on July 19, 2004, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

**Summary of Proposed Changes to the 2003 Delaware  
State Fire Prevention Regulations**

Enclosed are the changes being proposed on February 17, 2004 to the State Fire Prevention Commission for consideration. Throughout the document, words that are shown as "struck through" (~~Example~~) represents text that will be deleted. Words that are "underlined" (Example) represents text that will be added. The following is a summary of the changes.

1. Part I, ANNEX A and ANNEX B are mostly reformatting of section numbers to comply with NFPA's recent Manual of Style change.
2. Part I, ANNEX B, NFPA 13D: specifies that the alarm is to sound throughout the protected property.
3. Part II, Chapter 6:
  - 6-1.4.1, A-6-1-4-1, 6-1.4.2, and A-6-1.4.2 modified to reflect new title and new wording of New Castle County Code.

- Rewrite of 6-4 and add text to define when water is available.
- Amend 6-5.3.3 to allow an engineering analysis as an option to a specified pipe size.

4. Part V, Chapter 5: modify 1-1.8 to reflect the needs of the DFIRS system of Incident Reporting.

5. Part V, Chapter 1: add a new section (1-2.8) to address access to Gated Communities.

6. Part VI, Chapter 3: add a new section (3-4.4) to replace a 1977 policy memo regarding portable fire extinguishers in apartment buildings.

7. Part VI, Chapter 3: modify 3-6.5 and 3-6.7 to accurately reflect effective dates of the requirements of this Chapter.

8. Appendix E: add fee requirements specified in the Regulation but not previously included in Appendix E.

#### **AMEND PART I, ANNEX A AS FOLLOWS:**

**In two (2) places, correct misprinted edition date on currently adopted NFPA document as follows:**

55<sup>1</sup> ~~2001~~ Standard for Compressed and Liquefied Gases in portable Cylinders

55<sup>1</sup> ~~1998~~ Standard for Compressed and Liquefied Gases in portable Cylinders

#### **AMEND PART I, ANNEX B AS FOLLOWS:**

**MODIFY NFPA 13, 2002, Standard for the Installation of Sprinkler Systems.**

**Chapter 8, Installation Requirements.**

**8.16 System Attachments.**

**8.16.2 Arrangement.**

~~**8.16.2.4.6 Fire Department Connection**~~

**8.16.2 Fire Department Connection.**

**8.16.2.4 Arrangement**

**AMEND §~~8-16.2.4.6~~ 8.16.2.4.6 by deleting the existing §~~8-16.2.4.6~~ 8.16.2.4.6 and inserting a new section to read as follows:**

**MODIFY NFPA 13D, 2002, Standard for the Installation of Sprinkler Systems In One- And Two-Family Dwellings And Manufactured Homes.**

**Chapter 7, System Components.**

#### **7.6 Alarms.**

**~~AMEND §7.6, Alarms, by deleting the existing Exception and adding the following to §7.6:~~**

~~**The alarm shall be of sufficient intensity to sound an alarm at 15 dBA above ambient noise level inside the protected property.**~~

**AMEND §7.6, Alarms, by modifying text to read as follows:**

Local waterflow alarms shall be provided on all sprinkler systems. The alarm shall be of sufficient intensity to sound an alarm at 15 dBA above ambient noise level throughout all indoor areas of the protected property.

**AMEND Section numbers in NFPA 54, 2002, National Fuel Gas Code.**

**Chapter 9, Installation of Specific Equipment.**

**9.23 Room Heaters.**

~~**9-23-1**~~ **9.23.1 Prohibited Installations.** Unvented room heaters shall not be installed in bathrooms and bedrooms.

**AMEND Section numbers in NFPA 58, 2001, Liquefied Petroleum Gases Code.**

**Chapter 1, General Provisions.**

~~**1-4**~~ **1.4 Notification Of Installations.**

**AMEND §~~1-4-1~~ 1.4.1 Stationary Installations, by deleting the existing section and inserting two new subsections to read as follows:**

~~**1-4.1.1**~~**\*1.4.1.1\*** Plans shall be submitted to the Office of State Fire Marshal for review and approval for the following liquefied petroleum gas (LPG) installations:

~~**A-1-4.1.1**~~ **A.1.4.1.1** This section still requires the submission of plans for all LP Gas installations with an aggregate capacity of 1,000 gallons or more, and now requires the submission of plans for all portable cylinder exchange installations.

~~**1-4.1.2**~~**\*1.4.1.2\*** Plans shall be submitted to the Office of State Fire Marshal for review and approval regarding liquefied petroleum gas (LPG) installations for all sites and locations where LPG is dispensed by a retail operation to the public, regardless of tank storage capacity.

~~**A-1-4.1.2**~~ **A.1.4.1.2** Submission of plans for all LP Gas Installations where tanks are filled as a retail operation for the public.

*Exception To ~~1-4.1 and 1-4.2.1.4.1 and 1.4.2:~~ One- and Two-Family Dwellings are not required to comply with these sections.*

## Chapter 3, Installation Of LP-Gas Systems.

### ~~3-10~~ 3.10 Fire Protection.

#### ADD New ~~§3-10.4~~ 3.10.4:

#### ~~3-10.4~~ 3.10.4 Fire Protection At Bulk Plants.

~~3-10.4.1~~ 3.10.4.1 **Application.** This section regulating bulk plants applies to facilities whose primary purpose is to receive gas by tank car, tank truck, or piping, and distribute the gas to the end user by use of portable container delivery, tank truck, or gas piping.

*Exception No. 1: ~~§3-10.4~~ 3.10.4 shall not apply to those facilities that fall within the definition of "REMOTE" with respect to location, as defined in ~~§3-10.4.2~~ 3.10.4.2. Under this exception, the requirements of ~~§3-10.4.5~~ 3.10.4.5, Water Supply for Fire Protection, are retained and required.*

#### ~~3-10.4.2~~ 3.10.4.2 Definitions.

~~3-10.4.3~~ 3.10.4.3\* Notwithstanding any provisions of this Section to the contrary, all LP-Gas facilities having storage containers with a combined aggregate water capacity of more than 18,000 gallons, where LP-Gas is transferred from railcar to tank storage, from railcar to vehicle, from tank storage to vehicle, from vehicle to vehicle, from tank storage to railcar, or from vehicle to tank storage, shall incorporate the following additional fire protection measures:

~~A-3-10.4.3~~ A.3.10.4.3 **Total Product Containment System.** A total product containment system includes emergency internal and shutoff valves having remote and thermal capability and pull-away protection, such installation in accordance with standards and specifications of both the American Petroleum Institute (API) and NFPA 58.

~~3-10.4.4~~ 3.10.4.4 No persons, other than the plant management or plant employees, shall have access to any bulk LP-Gas storage facility.

~~3-10.4.5~~ 3.10.4.5 **Water Supply For Fire Protection.** Notwithstanding the provisions of Part II, Chapter 6 of these Regulations, water supply for fire protection shall be provided as follows for all bulk LP-Gas storage facilities:

#### ~~3-10.4.6~~ 3.10.4.6 Fire Department Chief Officer.

~~3-10.4.6.1~~ 3.10.4.6.1 The Office of State Fire Marshal shall hand deliver to the Fire Department Chief Officer having

jurisdiction a site plan and set of structural or building plans that have been submitted for review and approval by the Office of State Fire Marshal; the Fire Department Chief Officer shall sign when accepting the plans from the Office of State Fire Marshal.

~~3-10.4.6.2~~ 3.10.4.6.2 Within ten working days of the Fire Department Chief Officer having received the plans and specifications as identified in ~~§3-10.4.6.1~~ 3.10.4.6.1 of this Regulation, the Fire Department Chief Officer shall respond in writing to the Office of State Fire Marshal and will provide the following information:

~~3-10.4.6.3~~ 3.10.4.6.3 If the Fire Department Chief Officer does not respond within ten working days as required in ~~3-10.4.6.2~~ 3.10.4.6.2 of this Regulation, the Office of State Fire Marshal will incorporate the necessary fire protection features consistent with generally accepted fire protection practices.

## Chapter 4, LP-Gas Liquid Transfer.

### ~~4-2~~ 4.2 Operational Safety.

#### ~~4-2.2~~ 4.2.2 Containers To Be Filled Or Evacuated.

AMEND ~~§4-2.2.1~~ 4.2.2.1 by deleting the existing ~~§4-2.2.1~~ 4.2.2.1 and inserting a new ~~§4-2.2.1~~ 4.2.2.1 to read as follows:

~~4-2.2.1~~ 4.2.2.1\* Containers shall be filled only by the owner or upon the owner's authorization.

~~A-4-2.2.1~~ 4.2.2.1 This modification retains the language of NFPA Pamphlet No. 58, 1989 Standard for the Storage and Handling of LP Gases.

(a) This requirement is in keeping with 16 Del.C. §7702.

## Chapter 5, Storage Of Portable Containers Awaiting Use, Resale, Or Exchange.

### ~~5-4.2~~ 5.4.2 Protection Of Containers.

AMEND ~~§5-4.2.2~~ 5.4.2.2 by deleting ~~§5-4.2.2~~ 5.4.2.2 and inserting a new ~~§5-4.2.2~~ 5.4.2.2 to read as follows:

~~5-4.2.2\*~~ 5.4.2.2\* Protection against vehicle impact shall be provided by installing traffic/bumper posts, or other protection acceptable to the State Fire Marshal.

~~A-5-4.2.2~~ A.5.4.2.2 The intent of this requirement is to ensure the protection of the portable cylinders from vehicular damage and to emphasize that the standard curbs are not considered adequate protection.

AMEND Section numbers in NFPA 101, 2000, The Life Safety Code.

Chapter 9, Building Service and Fire Protection Equipment.

~~9-2~~ 9.2 Heating, Ventilating, and Air Conditioning:

~~AMEND §9.2.1, by adding a new §9.2.1.1, Unvented Fuel-Fired Heating Equipment, and renumber the following sections, to read as follows:~~

AMEND §9.2.1, by adding a new §9.2.1.1, Unvented Fuel-Fired Heating Equipment, to read as follows:

~~9.2.1~~ 9.2.1 Air Conditioning, Heating, Ventilating Ductwork, and Related Equipment.-

~~9.2.1.1~~ 9.2.1.1 Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of all occupancies. In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and modified by these Regulations shall be permitted.

Chapter 16, New Day Care Occupancies.

~~16-2~~ 16.2 Means of Egress Requirements.

~~16-2.2~~ 16.2.2 Means of Egress Components.

~~16-2.2.2~~ 16.2.2.2 Doors.

AMEND ~~§16-2.2.2.2, 16.2.2.2.2~~ 16.2.2.2.2 Panic Hardware or Fire Exit Hardware, by deleting the existing ~~§16-2.2.2.2 16.2.2.2.2~~, and inserting a new ~~§16-2.2.2.2 16.2.2.2.2~~ 16.2.2.2.2 to read as follows:

~~16-2.2.2.2~~ 16.2.2.2.2 **Panic Hardware Or Fire Exit Hardware.** Any door in a required means of egress from an area having an occupant load of 13 or more clients shall be permitted to be provided with a latch or lock only if the latch or lock is panic hardware or fire exit hardware.

~~16-3~~ 16.3 Protection.

~~16-3.4~~ 16.3.4 Detection, Alarm, and Communication Systems.

AMEND ~~§16-3.4.4 16.3.4.4~~, Emergency Forces Notification, by deleting the existing ~~§16-3.4.4 16.3.4.4~~ and inserting a new ~~§16-3.4.4 16.3.4.4~~ 16.3.4.4 to read as follows:

~~16-3.4.4~~ 16.3.4.4 **Emergency Forces Notification.** Fire department notification shall be accomplished in accordance with ~~§7-6.4-9.6.4~~.

Chapter 24, One- And Two-Family Dwellings.

~~24-1.1~~ 24.1.1 Application.

AMEND ~~§24-1.1 24.1.1~~, Application, by deleting the existing ~~§24-1.1.2 24.1.1.2~~ and inserting a new ~~§24-1.1.2 24.1.1.2~~ 24.1.1.2 to read as follows:

~~24-1.1.2~~ 24.1.1.2 This Chapter shall not be utilized by the Office of State Fire Marshal during the plan review process, except when individual, specified sections are referenced by other Chapters of the Life Safety Code.

Chapter 26, Lodging Or Rooming Houses.

~~26-3~~ 26.3 Protection.

~~26-3.3~~ 26.3.3 Detection, Alarm, And Communication Systems.

AMEND ~~§26-3.3 26.3.3~~, Detection Alarm, And Communication Systems, by adding a new Subsection to read as follows:

~~26-3.3.4~~ 26.3.3.4 A corridor smoke detection system in accordance with ~~§9-6 9.6~~ shall be installed in all lodging or rooming houses.

Chapter 30, New Apartment Buildings.

~~30-3.4~~ 30.3.4 Detection, Alarm, and Communication Systems.

AMEND ~~§30-3.4.1 30.3.4.1~~, General, by deleting ~~§30-3.4.1 30.3.4.1~~ and two exceptions, and inserting a new ~~§30-3.4.1 30.3.4.1~~ 30.3.4.1 and exception to read as follows:

~~30-3.4.1~~ 30.3.4.1 **General.** All new apartment buildings shall be provided with a fire alarm system in accordance with ~~§9-6 9.6~~, except as modified by ~~30-3.4.2 through 30-3.4.4 30.3.4.2 through 30.3.4.4~~

*Exception: Where each dwelling unit is separated from other contiguous dwelling units by fire barriers having a fire resistance rating of not less than one hour, and where each dwelling unit has either its own independent exit or its own independent stairway or ramp discharging at grade.*

AMEND ~~§30-3.4.4 30.3.4.4~~, Detection, by adding a new Subsection to read as follows:

~~30-3.4.4.1~~ 30.3.4.4.1 A corridor smoke detection system in accordance with ~~§9-6 9.6~~, shall be installed in all apartment buildings.

Chapter 32, New Residential Board And Care Occupancies.

## ~~32-2~~ 32.2 Small Facilities.

AMEND ~~§32-2~~ 32.2, Small Facilities, by adding new Subsections to read as follows:

~~32-2.2.7~~ 32.2.2.7 Emergency Lighting. Emergency lighting shall be installed in accordance with ~~§7-9~~ 7.9.

~~32-2.2.8~~ 32.2.2.8 Marking Of Means Of Egress. Means of egress shall be marked in accordance with ~~§7-10~~ 7.10.

~~32-2.2.9~~ 32.2.2.9 Portable Fire Extinguishers. Portable fire extinguishers shall be provided near hazardous areas in accordance with ~~§9-7~~ 9.7.

~~32-2.3.4~~ 32.2.3.4 Detection, Alarm, and Communication Systems.

AMEND ~~§32-2.3.4~~ 32.2.3.4, Detection, Alarm, and Communication Systems, by adding ~~§32-2.3.4.4~~ 32.2.3.4.4, Emergency Forces Notification, to read as follows:

~~32-2.3.4.4~~ 32.2.3.4.4, Emergency Forces Notification. Fire department notification shall be accomplished in accordance with ~~§9-6.4~~ 9.6.4.

## ~~32-3~~ 32.3 Large Facilities.

~~32-3.3.4~~ 32.3.3.4 Detection, Alarm, and Communication Systems.

AMEND ~~§32-3.3.4.6~~ 32.3.3.4.6, Fire Department Notification, by deleting the existing ~~§32-3.3.4.6~~ 32.3.3.4.6 and inserting a new ~~§32-3.3.4~~ 32.3.3.4 to read as follows:

~~32-3.3.4.6~~ 32.3.3.4.6 Fire Department Notification. Fire department notification shall be accomplished in accordance with ~~§9-6.4~~ 9.6.4.

AMEND PART II, CHAPTER 6 AS FOLLOWS:

### Delete A-6-1

#### 6-1\* General.

~~A-6-1~~ The Standard for Fire Flow for Fire Protection has undergone extensive revisions including, but not limited to, the relocation of all definitions to Part I, Chapter 2; the partial elimination of some requirements; the changes in terminology for consistency throughout these Regulations; and the complete restructuring of the Fire Flow tables and their requirements.

Revise 6-1.4.1 and A-6-1.4.1 as follows:

~~6-1.4.1\*~~ Residential sub-divisions, located with the jurisdiction of New Castle County, containing more than

twenty-five (25) lots, or minimum aggregate side yard widths of less than thirty (30) feet. These requirements are contained in ~~§20-61~~ of New Castle County Code Chapter 40, Article 12, reproduced in Appendix A of this Regulation.

~~A-6-1.4.1~~ New Castle County Code ~~§20-61~~ Water Supply:

~~(a)~~ All proposed residential subdivisions containing more than twenty-five (25) lots, or minimum aggregate side yard widths of less than thirty (30) feet, shall provide a public or community water distribution system. The design and installation of such public or community system shall be subject to the approval of the appropriate state agencies and the main sizes shall meet the requirements of the Office of the State Fire Marshal.

~~(b)~~ Where the subdivider proposes that individual on-site water supply systems be utilized within the subdivision, the subdivider shall either install such facilities or shall require (by deed restriction or otherwise), as a condition of the sale of each lot or parcel within the subdivision, that the facilities shall be installed by the purchaser of such lot or parcel at the time that a principal building is constructed thereon, in accordance with appropriate state regulations.

~~(c)~~ Where individual on-site water supply systems are to be utilized, each lot shall be of a size and shape to allow safe location of such a system.

~~(d)~~ Regulations governing on-site water supply systems are to be found in Appendix XII of this Chapter. An on-site water supply system shall further require a permit from appropriate state agencies (Ord. No. 73-103, Sec. 5; Ord. No. 90-200, Sec. 2, 9-25-90)

~~A-6-1.4.1~~ New Castle County Code Chapter 40, Article 12, Sewer and Water Impact:

#### SECTION 40.12.210 WATER SERVICE

Each water supply company shall develop a method to determine water volumes and pressure in their systems. On-site testing shall be used as the basis for determining the capacities in lines, pumps, storage and distribution facilities. The certification of adequate capacity of the water service shall be obtained by the developer from the water supplier.

#### SECTION 40.12.115 WATER SUPPLY

A. All proposed residential subdivisions containing more than twenty-five (25) lots or minimum aggregate side yard widths of less than thirty (30) feet shall provide a public or community water distribution system. The design and installation of such public or community system shall be subject to the approval of the appropriate State agencies, and the main sizes shall meet the requirements of the office of the State Fire Marshal.

B. Where the subdivider proposes that individual on-site water supply systems be utilized within the subdivision, the subdivider shall either install such facilities or shall require,

by deed restriction or otherwise, as a condition of the sale of each lot or parcel within the subdivision, that the facilities shall be installed by the purchaser of such lot or parcel at the time that a principal building is constructed thereon, in accordance with appropriate State requirements. Where individual on-site water supply systems are to be utilized, each lot shall be of a size and shape to allow safe location of such a system. An on-site water supply shall further require a permit from appropriate State agencies.

**Revise 6-1.4.2 and A-6-1.4.2 as follows:**

**6-1.4.2\*** Fire hydrants, located within the jurisdiction of New Castle County. These requirements are contained in §20-64 of the New Castle County Code Chapter 40, Article 22, reproduced in Appendix A of this Regulation.

**~~A-6-1.4.2~~** New Castle County Code §20-64 Fire Hydrants and Fire Lanes:

(a) ~~Fire hydrants shall be installed within five hundred (500) feet of all houses, measured by way of accessible public thoroughfare, wherever a public or community water supply system is provided (as required by the National Association of Fire Underwriters), and within four hundred (400) feet of all commercial and industrial establishments, as approved by the State Fire Marshal.~~

(b) ~~All fire hydrants shall be shown on record plans, with an indication of water main sizing connecting thereto.~~

(c) ~~The need for and location of fire lanes for multifamily and row or group residential, commercial, industrial, and institutional development will be determined by the State Fire Marshal in accordance with the guidelines contained in the publication "Standard for Compliance with New Castle County Ordinance 71-103", published by the State Fire Marshal. In applying such guidelines, a fire lane shall be deemed necessary only where reasonable and direct accessibility by fire apparatus cannot be made to at least one side of a structure from an all-weather hard surface, capable of bearing the weight of commonly used fire apparatus. Such fire lanes to be provided need not be paved with concrete, amesite or similar material, but may be surfaced in any suitable manner such as to provide an all-weather surface capable of performing the above function and shall be signed in such a fashion as to indicate the purpose and intent thereof and to prohibit parking thereon.~~

(d) ~~In cases where equivalent fire protection is provided by appropriately sized standpipes, or similar arrangements the requirements of subsection (c) of this section shall not be applicable. (Ord. No. 73-103, Section 5; Ord. No. 88-168, Section 1, 1-10-89; Ord. No. 90-200, Section 1, 9-25-90).~~

**~~A-6-1.4.2~~** New Castle County Code Chapter 40 Article 22, Drainage, Utilities, Septic Systems, Parking, Loading, and

Lighting:

SECTION 40.22.430 FIRE HYDRANTS AND FIRE LANES.

A. Fire hydrants in subdivisions shall be installed within five hundred (500) feet of all houses, measured by way of accessible public thoroughfare, wherever a public or community water supply system is provided, as required by the National Association of Fire Underwriters, and within four hundred (400) feet of all commercial and industrial establishments, as approved by the State Fire Marshal.

B. All fire hydrants shall be shown on record plans, with an indication of water main sizing connecting thereto.

C. The need for and location of fire lanes for multi-family and row or group residential, commercial, industrial and institutional development will be determined by the State Fire Marshal in accordance with the guidelines contained in the publication Standard for Compliance with New Castle County published by the State Fire Marshal. In applying such guidelines, a fire lane shall be deemed necessary only where reasonable and direct accessibility by fire apparatus cannot be made to at least one (1) side of a structure from an all-weather hard surface, capable of bearing the weight of commonly used fire apparatus. Such fire lanes to be provided need not be paved with concrete, amesite or similar material, but may be surfaced in any suitable manner such as to provide an all-weather surface capable of performing the function and shall be signed in such a fashion as to indicate the purpose and intent thereof and to prohibit parking thereon.

D. Where equivalent fire protection is provided by appropriately sized standpipes or similar arrangements, the requirements of subsection C of this Section shall not be applicable.

**Rewrite Part II, Chapter 6, Section 6-4 as follows:**

**~~6-4\* Water Distribution Systems:~~**

~~**A-6-4** In the application of this regulation to developments of individual, detached, stand alone single family dwellings, the Department of Natural Resources and Environmental Control, Division of Water Resources, in an attempt to have more public water systems installed in lieu of individual wells, has requested the State Fire Prevention Commission and the State Fire Marshal to accept the following:~~

~~The Office of State Fire Marshal and the State Fire Prevention Commission are most concerned about the necessity for providing adequate water supplies for fire fighting purposes.~~

~~The Office of State Fire Marshal and the State Fire Prevention Commission are not inclined, at this time, to change our current regulations dealing with fire flow or fire hydrant provisions.~~

The Office of State Fire Marshal will consider an application from individual developers on a case by case basis, in order to analyze the impact of such potential alternative methods on fire service needs.

The alternative methods discussed above will be linked to the DNREC regulations to accommodate subdivisions of less than fifty lots in addition to the requirement for installation of the fire protection infrastructure for subdivisions with over fifty lots, requiring the providing of the minimum fire flows and the installation of the fire hydrants, when construction begins on the fiftieth lot.

The alternative methods discussed herein will be applied in conjunction with the additional provision of the State Fire Prevention Regulations with respect to individual, detached, single family dwellings within the appropriate range of square footage.

The alternative methods discussed herein apply only to individual, detached single family dwellings.

The Office of State Fire Marshal has agreed in principle to this provision. Our approach via this method is limited to those areas of the State where there is not an access to public water systems.

**6-4.1** Where a water distribution system is required for stand alone/detached one and two family dwelling sites, the infrastructure for fire protection water shall be provided. The fire flow requirements shall take effect and be provided at the completion of the first fifty (50) lots and prior to the development of the fifty-first (51st) lot.

**6-4.2** The requirements of Fire Flow Table 1, with respect to the provisions of the Standard on Water Supplies for Suburban and Rural Fire Fighting, NFPA 1142, as adopted and/or modified by these Regulations, may be applied to subdivisions of 25 or less lots of detached one and two family dwellings, where central water is provided, but the requirement for water flow for fire protection is as follows:

1) The infrastructure for fire flow capability must be installed to accommodate the fire flow requirements when additional development occurs.

2) For subdivisions of more than 25 lots of detached one and two family dwellings, water flow for fire protection, pursuant to the applicable provisions of this Chapter, must be provided at the completion of the 50th lot, or the last lot to be built in the subdivision if less than 50 lots.

**6-4.3** The infrastructure for fire flow shall consist of properly listed and sized underground mains, stub ups for hydrants, and associated valves.

#### **6-4\* Water Distribution Systems.**

6-4.1 Where water is available and a water distribution system is required for stand alone/detached one- and two family dwelling sites, the infrastructure for fire protection water shall be provided. The infrastructure for fire flow

shall consist of properly listed and sized underground mains, stub ups for hydrants, and associated valves. The fire hydrants shall be installed prior to the fire flow requirements taking effect.

6-4.1.1 For purposes of this Regulation, water for fire protection shall be considered "available" whenever any portion of a proposed project's property or any portion of a proposed subdivision is situated within one thousand (1000) feet of any portion of a water supplier's new or existing infrastructure that includes water supply piping of 4 inches or more in nominal internal diameter. This measurement shall be calculated by way of accessible public thoroughfare(s) from the proposed property or subdivision and may not necessarily be a radius.

6-4.1.2 In the event the project or subdivision is situated in a geographical area that has been authorized to be provided with water service by a supplier other than the water supplier whose infrastructure is within the specified distance, the State Fire Marshal, on a case by case basis, may re-evaluate the requirements of § 6-4.1.1.

6-4.2 The requirements of Fire Flow Table 1, with respect to the Standard on Water Supplies for Suburban and Rural Fire Fighting, NFPA 1142, as adopted and/or modified by these Regulations, may be applied to subdivisions of 25 or less lots of one and two family detached homes, where central water is provided. However, the requirement for water flow for fire protection shall be required when:

1) Additional development creates a subdivision in excess of 25 lots of detached one or two family dwellings or

2) In the opinion of the State Fire Marshal the probability of additional development will occur in excess of 25 lots of detached one or two family dwellings then the infrastructure for fire flow capability must be installed to accommodate the fire flow requirements.

6-4.3 The requirements of Fire Flow Table 2 shall take effect where water is available and be provided under the following circumstances:

1) For subdivisions of 50 or more lots of detached one and two family dwellings the water flow for fire protection shall be provided upon completion of the 50<sup>th</sup> lot, and prior to the development of the 51<sup>st</sup> lot.

2) For subdivisions of 26 through 49 lots of detached one and two family dwellings the water flow for fire protection shall be provided at the completion of the last lot to be built.

**Amend Part II, Chapter 6, Section 6-5.3.3 by adding an exception to read as follows:**

6-5.3.3 Dead end mains shall not exceed 600 feet in length for main sizes under 10 inches in diameter.

Exception: Dead end mains exceeding 600 feet may be a

# PROPOSED REGULATIONS

minimum of 8 inches in diameter if an engineering analysis, acceptable to the Office of the State Fire Marshal, is submitted by a registered Professional Engineer demonstrating that the minimum flows and duration specified elsewhere in this Regulation are met or exceeded.

### Fire Flow Table 1\*

The requirements of Fire Flow Table 1 apply to rural areas where public, private, or central water is not available and where specified elsewhere in these Regulations.

**AMEND THE TEXT AT THE TOP OF THE FIRE FLOW TABLE 1 TO READ AS FOLLOWS:**

Occupancy	Maximum Aggregate Gross Square Footage	Provide a fire alarm system per 6-3.1.4	Minimum Set Back from all property lines	Maximum Height	Exposure Hazard on the Same Property	Internal Fire Separation	Apply
One & Two – Family Detached Dwellings	10,000	<u>no</u>	15'	3 Stories 35'	10'+	n/a	NFPA 1142
Multi-Family & Other Residential	10,000	<u>no</u>	15'	3 Stories 35'	10'+	n/a	NFPA 1142
Rowhouses & Townhouses	10,000	<u>no</u>	15'	3 Stories 35'	10'+	2-Hr rated wall Part I Chapter 2	NFPA 1142
Assembly	5,000	<u>no</u>	15'	1 Story 15'	10'+	n/a	NFPA 1142
Assembly <sup>1</sup>	5,001 to 10,000	<u>YES</u>	15'	2 Stories 30'	10'+	n/a	NFPA 1142
Health Care Business Education	10,000	<u>no</u> <u>no</u> <u>no</u>	15'	2 Stories 30'	10'+	n/a	NFPA 1142
Storage Industrial Mercantile	5,000	<u>no</u> <u>no</u> <u>no</u>	15'	To be reviewed on an individual basis	15'+	n/a	NFPA 1142
Storage <sup>1</sup> Industrial <sup>1</sup> Mercantile <sup>1</sup>	5,001 to 10,000	<u>YES</u> <u>YES</u> <u>YES</u>	25'	To be reviewed on an individual basis	15'+	n/a	NFPA 1142
Mini-Storage	5,000	<u>no</u>	15'	2 Stories 30'	15'+	n/a	NFPA 1142
Mini-Storage	5,001 to 10,000	<u>no</u>	25'	2 Stories 30'	15'+	n/a	NFPA 1142

there is a public, private, or central water system.

<sup>1</sup> A fire alarm signaling system shall be provided. See §6-3.1.4.

**AMEND THE TEXT AT THE BOTTOM OF THE FIRE FLOW TABLE 2 TO READ AS FOLLOWS:**

### Fire Flow Table 2

The requirements of Fire Flow Table 2 apply to areas where

Occupancy	Maximum Aggregate Gross Square Footage	Internal Fire Separation	Flow Required	Hydrant Spacing
One- and Two-Family Detached Dwellings *	10,000	n/a	500 GPM 20 PSI Residual Pressure 1 Hour Duration	1,000 feet on center
Other Residential*	10,000	n/a	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Rowhouses* & Townhouses*	10,000	2-Hr rated wall	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
		Part I Chapter 2		
Assembly Health Care Business Education	10,000	n/a	1,000 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center
Storage Industrial Mercantile	10,000	n/a	1,500 GPM 20 PSI Residual Pressure 2 Hour Duration	800 feet on center
Mini-Storage	10,000	n/a	750 GPM 20 PSI Residual Pressure 1 Hour Duration	800 feet on center

\*Sites in New Castle County are subject to the provisions of New Castle County Code Chapter 40 Article 5 Ordinance #90-200. See §A-6-1.4.1 and §A-6-1.4.2.

#### AMEND PART V, CHAPTER 1 AS FOLLOWS:

**Amend Part V, Chapter 1, §1-1.8 by revising section 1-1.8 to read as follows:**

**1-1.8 Reporting Of Fire Incidents.** Any fire brigade, department, or company shall report every fire all incidents to the State Fire Marshal ~~on forms provided by~~ in an electronic format acceptable to the State Fire Marshal within ten days after the end of the month in which the incident occurs.

**Amend Part V, Chapter 1, §1-2 by inserting new sections 1-2.8 through 1-2.8.4 to read as follows:**

#### **1-2.8 Gated Communities**

**1-2.8.1** Fire Department access shall be provided to all otherwise inaccessible gated communities, subdivisions, developments, or property by any other name through the use of a system or device authorized by the local Fire Chief

and approved by the State Fire Marshal's Office.

**1-2.8.2** The system or device required in 1-2.8.1 shall be located in an area accessible to the fire department as determined by the local Fire Chief and approved by the State Fire Marshal's Office.

**1-2.8.3** The owner and/or occupant of the property requiring fire department access as specified in 1-2.8.1 and 1-2.8.2 shall maintain the approved system or device in strict accordance with the manufacturer's guidelines.

**1-2.8.4** The owner and/or occupant of the property requiring fire department access shall not modify access in any manner that could prevent fire department access without obtaining prior approval from the State Fire Marshal's Office.

#### AMEND PART VI, CHAPTER 3, §3-4.1 BY REVISING THE WORDING TO READ AS FOLLOWS:

**3-4.1\* Smoke Detection Systems Required.** All new apartment buildings shall be provided with an automatic smoke detection system in the interior corridors and/or hallways and/or stairways, in accordance with ~~§7-6, except as modified by 18-3.4.2 through 18-3.4.4,~~ of the Life Safety Code, NFPA 101, and the National Fire Alarm Code, NFPA

72, as adopted and/or modified by these Regulations.

**AMEND PART VI, CHAPTER 3, BY ADDING §3-4.4 TO READ AS FOLLOWS:**

**3-4.4 Portable Fire Extinguishers.** All apartment buildings shall be provided with portable fire extinguishers, placed as follows:

**3-4.4.1** At least one extinguisher with a rating of at least 2A-10BC shall be located on each stairway landing of every stairway common to two or more apartment units.

*Exception:* In lieu of the above, the owner may provide at least one extinguisher with a rating of at least 1A-10BC to each individual apartment unit.

**3-4.4.2** Each hazard area (such as laundry room, storage area, etc.) shall be provided with at least one extinguisher with a minimum rating of 2A-20BC.

**AMEND PART VI, CHAPTER 3, §3-6.5 BY REVISING THE WORDING TO READ AS FOLLOWS:**

**3-6.5** Effective December 17, 1997, the owner of any complex, building or buildings, ~~within 90 days from the effective date of the Regulation,~~ shall have on file with the Office of State Fire Marshal, a corrective plan of action detailing the owner's timetable for complying with the provisions of these Regulations.

**AMEND PART VI, CHAPTER 3, §3-6.7 BY REVISING THE WORDING TO READ AS FOLLOWS:**

**3-6.7** ~~Any existing apartment buildings, multi-family dwellings, etc., shall have five years from the effective date of this Regulation to be in compliance. Effective July 1, 2002, all new and existing apartment buildings, multi-family dwellings, etc., shall comply with the provisions of these Regulations.~~

**AMEND APPENDIX E, BY ADDING THE FOLLOWING:**

**Fire Alarm Central Station, Remote Station, or Monitoring Service or Company License.** The cost of an annual license for a Fire Alarm Central Station, Remote Station, or Monitoring Service or Company shall be \$25.00.

**Fire Alarm Signaling System Company License.** The cost of an annual license for a Fire Alarm Signaling System Company shall be \$25.00.

**Fire Alarm Signaling System Certificate Holder.** The cost of an annual certificate for a CERTIFICATE HOLDER of a Fire Alarm Signaling System Company shall be \$25.00.

**Fire Suppression System Company License.** The cost of an annual license for a Fire Suppression System Company shall be \$25.00.

**Fire Suppression System Certificate Holder.** The cost of an annual certificate for a CERTIFICATE HOLDER of a Fire Suppression System Company shall be \$25.00.

**AMEND APPENDIX E, "CERTIFICATES OF INSPECTION FOR FIRE ALARM SIGNALING SYSTEMS FEES." TO READ AS FOLLOWS:**

- (a) Apartment or other multi-family dwellings:
- (1) ~~Five (5) or less than five (5) buildings per complex: \$25.00 per system for each fire alarm system;~~
  - (2) more than five (5) buildings per complex: \$15.00 ~~per system for each fire alarm system up to a maximum of twenty (20) buildings. Or a total of \$300.00 per complex~~ Maximum fee per complex not to exceed \$300 for fire alarm systems.

**AMEND APPENDIX E, "CERTIFICATES OF INSPECTION FOR FIRE SUPPRESSION SYSTEMS FEES." TO READ AS FOLLOWS:**

- (b) Apartment or other multi-family dwellings:
- (1) ~~Five (5) or less than five (5) buildings per complex: \$25.00 per system for each fire suppression system;~~
  - (2) more than five (5) buildings per complex: \$15.00 ~~per system for each fire suppression system up to a maximum of twenty (20) buildings. Or a total of \$300.00 per complex~~ Maximum fee per complex not to exceed \$300 for fire suppression systems.

**AMEND APPENDIX E, DETAILED FEE LIST, " FIRE ALARM CERTIFICATE OF INSPECTION PER SYSTEM" TO READ AS FOLLOWS:**

Exception: Apartment or other multi-family dwellings:

- (1) ~~Five (5) or less than five (5) buildings per complex: \$25.00 per system for each fire alarm system;~~
- (2) more than five (5) buildings per complex: \$15.00 ~~per system for each fire alarm system up to a maximum of twenty (20) buildings. Or a total of \$300.00 per complex~~ Maximum fee per complex not to exceed \$300 for fire alarm systems.

**AMEND APPENDIX E, DETAILED FEE LIST, " FIRE SUPPRESSION CERTIFICATE OF INSPECTION PER SYSTEM" TO READ AS FOLLOWS:**

Exception: Apartment or other multi-family dwellings:

- (1) ~~Five (5) or less than five (5) buildings per complex: \$25.00 per system for each fire suppression system;~~

(2) more than five (5) buildings per complex: \$15.00 ~~per system~~ for each fire suppression system up to a maximum of twenty (20) buildings. ~~Or a total of \$300.00 per complex~~  
Maximum fee per complex not to exceed \$300 for fire suppression systems.

**AMEND APPENDIX E, DETAILED FEE LIST BY ADDING THE FOLLOWING:**

Fire Alarm Central Station, Remote Station, or Monitoring Service or Company License - \$25.00

In House Fire Alarm Signaling System License (per system) - \$100

In House Fire Suppression System License (per system) - \$100

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS IN OPTOMETRY**

24 DE Admin. Code 2100

Statutory Authority: 24 Delaware Code,  
Section 2104(a)(1) (24 Del.C. §2104(a)(1))

**PUBLIC NOTICE**

The Delaware Board of Examiners in Optometry is proposing an amendment to Rule 3.1 of its rules and regulations pursuant to 24 Del.C. §2104(a)(1) and 29 Del.C. §10115. The Board proposes to amend Rule 3.1. to clarify that an internship is to be done in a private practice setting in the State of Delaware, or other Board approved setting, under the supervision of a licensed optometrist or ophthalmologist to ensure that the clinical setting for the intern is in keeping with the standard of care in Delaware.

The Board will accept written comments from July 1, 2004 through July 31, 2004. The Board will hold a public hearing on the proposed amendment on August 26, 2004 at 6:30 p.m. in the second floor conference room in the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467. Written comments should be submitted to Jane Youmans, Administrative Specialist, Division of Professional Regulation, at the same above-listed address.

The proposed amendment to Rule 3.1. is as follows:

**3.0 Internship**

3.1 An internship is a course of study in which applicants receive part of their clinical training in a Board

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

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

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

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

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

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

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

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

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

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

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

only under the following conditions:

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

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

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

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

**2 DE Reg 85 (5/1/99)**

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

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

<http://www.state.de.us/research/profreg/Frame.htm>

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## **DEPARTMENT OF EDUCATION**

**14 DE Admin. Code 220**

Statutory Authority: 14 Delaware Code,  
Section 220 (14 **Del.C.** §220)

**Education Impact Analysis**

**Pursuant To**

**14 DEL.C. §122(d)**

### **101 Delaware Student Testing Program**

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

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §101 Delaware Student Testing Program in order to correct section 9.2.4.2 as per the requirements of No Child Left Behind. Section 9.2.4.2 has been amended to state that "students who are granted a special exemption shall be included in the participation rate calculation". This change aligns this regulation with 14 **DE Admin Code** 103.2.4.

Amendments to this section of 14 **DE Admin. Code** 103 were approved in May 2004.

Amendments were also made so that all references made to a student's parent or guardian include Relative Caregivers. In 1.0 grade K was changed to grade 2 and in 4.1.1 grades K and 1 were removed because they are no longer part of the State Assessment program.

#### **C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement through the student testing program but the changes are technical and related to the requirements of No Child Left Behind.

2. Will the regulation help ensure that all students receive an equitable education? The amendments to the regulation do not address equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amendments to the regulation do not address health and safety issues.

4. Will the regulation help to ensure that all students' legal rights are respected? The amendments to the regulation do not address students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the amendments to the

regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The amendments to the regulation do not add any additional costs for the State and the local boards.

## 101 Delaware Student Testing Program

### 1.0 Definition:

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

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's 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.

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

### 2.0 Levels of Performance:

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

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses

that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education.

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

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education with the consent of the State Board of Education.

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

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

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

### 3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 Del.C. §153(b) when determining the placement of students who score at

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

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

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

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

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

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

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

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

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

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

4.1 The following students are required to have an Individual Improvement Plan: Students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the

mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and ~~a parent or legal guardian of the student~~ the student's parent, guardian or Relative Caregiver.

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

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

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

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

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

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

#### **5.0 Summer school programs for students in grades 3, 5, and 8 as required pursuant to 14 Del.C. § 153.**

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

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

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

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

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

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

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

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

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

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

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

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

6.3.2 Beginning with the year 2005, the

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

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

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

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

## 7.0 Security and Confidentiality:

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

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

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

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

7.4 Procedures for Reporting Security Breaches

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

7.4.2 District Test Coordinators shall report all

situations immediately to the State Director of Assessment and Analysis.

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

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

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

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

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

## **8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)**

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

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

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

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

8.2 ~~Parent/guardian(s)~~ The student's parent, guardian or Relative Caregiver may request to view the test questions

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

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

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

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

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

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

## **9.0 Invalidations and Special Exemptions**

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

9.1.1 Reporting of situations that occur during testing.

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

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

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

9.1.1.3 The Director of Assessment for the

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

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

#### 9.1.2 Consequences of invalidations.

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

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

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

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

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

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar

days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

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

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

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

9.2.3 Request for special exemptions based on emergency.

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

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

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

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

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

9.2.3.3.3 The Associate Secretary

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

9.2.4 Consequences of Special Exemptions.

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

9.2.4.2 ~~Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.~~ Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 DE Admin. Code 103.2.4 unless their medical condition prevents them from being in school during the testing period.

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

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

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**EDUCATION IMPACT ANALYSIS  
PURSUANT TO  
14 DEL.C. Section 122(d)**

**106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)**

**107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)**

**108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to adopt 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II), 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) and 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The development of these regulations by the Department of Education was mandated in 14 Del.C. 1270(b).

These regulations will replace the three existing regulations for DPAS I, 110 Teachers and Specialists Appraisal Process, 112 Addendum to Teachers and Specialists Appraisal Process and 115 School Level Administrator Appraisal Process on July 1, 2005. The new

regulations 106, 107 and 108 have the added component of student achievement as one of the evaluation elements and 108 Administrator Appraisal Process Delaware Performance Appraisal System includes all administrators not just building level administrators.

These regulations were previously advertised in *Delaware Register of Regulations* on March 1, 2004 (Volume 7 Issue 9) and on May 1, 2004 (Volume 7 Issue 11).

**C. Impact Criteria**

1. Will the regulations help improve student achievement as measured against state achievement standards? The regulations are concerned with improving teacher, specialist and administrator quality which relates to student improvement. This is the last piece of the accountability system.

2. Will the regulations help ensure that all students receive an equitable education? The regulations address a staff appraisal process, not equity issues for students.

3. Will the regulations help to ensure that all students' health and safety are adequately protected? The regulations address a staff appraisal process, not students' health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulations address a staff appraisal process, not students' legal rights.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulations will require new training and different procedures for the evaluation of staff in Delaware schools.

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

8. Will the 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 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 Delaware Code requires that the Department of Education promulgate regulations for

a performance appraisal system for teachers, specialists and administrators.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost for these new regulations should not be more than the existing appraisal system but the training for the DPAS II may result in increased costs.

## 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 The Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process.

1.1 For teachers participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective teaching as defined in 7.0.

### 2.0 Definitions

“Announced Observation” shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

“Board” shall mean a local board of education or charter school board of directors.

“Certified Evaluator” shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 9.0.

“DPAS” shall mean the Delaware Performance Appraisal System in effect prior to July 1, 2005.

“Experienced Teacher” shall mean a teacher who holds valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003.

“Improvement Plan” shall be the plan that a teacher and evaluator mutually develop in accordance with section 8.0.

“Novice Teacher” shall mean a teacher who holds a valid and current Initial License.

“Satisfactory Component Rating” shall mean the teacher understands the concepts of the component and the teacher’s performance in that component is acceptable.

“Satisfactory Evaluation” shall be used to qualify for a continuing license and shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“Summative Evaluation” shall be the rating process at the conclusion of the appraisal cycle.

“Technical Assistance Document” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the 5 components of

evaluation and other relevant documents that assist in the appraisal process.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

“Unsatisfactory Component Rating” shall mean that the teacher does not understand the concepts of the component and the teacher’s performance in that component is not acceptable.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

### 3.0 Appraisal Cycles

3.1 Experienced teachers who have earned a rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. The minimum annual evaluation for an experienced teacher who has earned an effective rating, may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced teachers in a building who received a rating of “Effective” or “Exemplary” on the most recent DPAS Performance Appraisal may have the annual Summative Evaluation waived.

3.2 Experienced teachers who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.

3.3 Novice teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice teachers who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.

### 4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board

of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

## **5.0 Appraisal Criteria**

5.1 The following five (5) components shall be the basis upon which the performance of a teacher shall be evaluated by a certified evaluator:

### **5.1.1 Planning and Preparation**

#### **5.1.1.1 Selecting Instructional Goals:**

Teacher selects instructional goals that are aligned with the DE content standards and available DSTP/district/school/program data. Goals are appropriate for the learners and reflect high expectations consistent with DSTP levels of performance.

#### **5.1.1.2 Designing Coherent Instruction:**

Teacher plans for learning activities that align with the goals and supports student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the DE content standards.

5.1.1.3 **Demonstrating Knowledge of Content and Pedagogy:** Teacher shows his/her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections between content areas that deepen student learning. The content that he/she teaches is aligned to the DE content standards.

5.1.1.4 **Demonstrating Knowledge of Students:** Teacher shows an awareness of his/her knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests, cultural heritage, and DSTP performance levels.

### **5.1.2 Classroom Environment**

#### **5.1.2.1 Managing Classroom Procedures:**

Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routine procedures that maximize learning time.

5.1.2.2 **Managing Student Behavior:** Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.

5.1.2.3 **Creating an Environment to Support Learning:** Teacher creates an atmosphere in which learning

is valued. Teacher-student and student-student interactions show rapport that is grounded in mutual respect.

5.1.2.4 **Organizing Physical Space:** Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and make resources accessible to all students.

### **5.1.3 Instruction**

#### **5.1.3.1 Engaging Students in Learning:**

Content is appropriate, clear, and links to student knowledge and experience. Content is aligned with the DE content standards and informed by the DSTP instructional needs comments. Activities and assignments engage students in the exploration of the content. Instructional materials are suitable to the instructional goals. The instruction is coherent.

5.1.3.2 **Demonstrating Flexibility and Responsiveness:** Teacher has a repertoire of instructional strategies and makes modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and DSTP instructional needs comments.

5.1.3.3 **Communicating Clearly and Accurately:** Verbal and written communication is clear and appropriate to students' age, background, and level of understanding.

5.1.3.4 **Using Questioning and Discussion Techniques:** Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student-led discussions.

### **5.1.4 Professional Responsibilities**

#### **5.1.4.1 Communicating with Families:**

Teacher shares information about the school's educational program, its alignment with the DE content standards, and expectations for student performance. Teacher develops two-way communication with families about student progress, behavior, and personal needs or concerns.

5.1.4.2 **Developing a Student Record System:** Teacher keeps records of attendance, emergency contact information, personal information (such as: allergies, medications, accommodations), and behavior. Shares relevant information with appropriate school personnel.

5.1.4.3 **Growing and Developing Professionally:** Teacher participates in professional development to increase his/her knowledge of content and pedagogy. Teacher chooses professional development that is aligned with the needs of the school/district/students.

5.1.4.4 **Reflecting on Professional Practice:** Teacher engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving instruction and learning.

### **5.1.5 Student Improvement**

#### **5.1.5.1 Showing Improvement on the DSTP:**

Teacher uses DSTP data analysis to inform classroom improvement, curriculum and instruction decisions.

5.1.5.2 Aligning Assessments to Learning Goals and DSTP: Teacher creates dependable assessments and scoring criteria that accurately measure the learning goals based on the DE content standards and DSTP and classroom performance assessments and that yield data about student needs and progress relative to the content standards measured by the DSTP.

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Planning and Preparation

5.2.1.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 4 of the following 5 criteria:

5.2.1.1.1 Selects goals that are clear, reflect high expectations, are consistent with DSTP levels of performance, focus on learning, align with Delaware content standards and available DSTP/district/school/program data, and are suitable for the class.

5.2.1.1.2 Designs instruction that has a clearly defined structure, is appropriate for students, and matches the selected goals.

5.2.1.1.3 Chooses materials and activities that match the goals and engage students in learning.

5.2.1.1.4 Displays solid content and pedagogy knowledge and makes connections within the content area and with other content areas that deepen student learning. Displays an understanding of prerequisite knowledge and anticipates student misconceptions.

5.2.1.1.5 Displays knowledge of student developmental characteristics, approaches to learning, knowledge, skills, interests, cultural heritage, and DSTP performance levels.

5.2.2 Classroom Environment

5.2.2.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 8 of the following 11 criteria:

5.2.2.1.1 Posts classroom procedures/rules stated in student friendly terms.

5.2.2.1.2 Encourages students in assuming responsibility for following procedures.

5.2.2.1.3 Uses transitions appropriately to maximize learning time.

5.2.2.1.4 Posts behavioral expectations and consequences in student friendly terms.

5.2.2.1.5 Monitors and responds to behavior in effective ways that minimize disruptions.

5.2.2.1.6 Discusses classroom procedures/rules with students in ways that show shared valuing of procedures/rules.

5.2.2.1.7 Interacts with students and encourages student-student interactions in ways that show rapport and mutual respect.

5.2.2.1.8 Displays student work.

5.2.2.1.9 Organizes, allocates, and manages physical space in ways that create a safe learning environment.

5.2.2.1.10 Uses physical resources in ways that contribute to effective instruction.

5.2.2.1.11 Makes resources available to all students.

5.2.3 Instruction

5.2.3.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 7 of the following 9 criteria:

5.2.3.1.1 Selects content that is aligned with the DE content standards, is appropriate, clear, and links to student knowledge and experience and the DSTP instructional needs comments.

5.2.3.1.2 Selects and designs activities and assignments that engage students in the exploration of the content.

5.2.3.1.3 Uses instructional materials that are suitable to the instructional goals.

5.2.3.1.4 Delivers coherent instruction.

5.2.3.1.5 Uses a repertoire of instructional strategies and makes adjustments to lessons as needed.

5.2.3.1.6 Differentiates instruction based on learner characteristics and DSTP instructional needs comments.

5.2.3.1.7 Communicates clearly in writing and verbally. Communicates in ways appropriate to students' age, background, and level of understanding.

5.2.3.1.8 Asks questions that are appropriate to the content and level of students' understanding. Encourages students to pose their own questions and is responsive to student questions.

5.2.3.1.9 Facilitates student-led discussions.

5.2.4 Professional Responsibilities

5.2.4.1 A satisfactory rating for this component shall mean the teacher demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

5.2.4.1.1 Shares information, in a variety of ways, about the school's educational program, its alignment with the DE content standards, and expectations for student performance.

5.2.4.1.2 Develops two-way communication with families about student progress, behavior, and personal needs or concerns.

5.2.4.1.3 Responds to families in a timely and appropriate way.

5.2.4.1.4 Develops and maintains a record keeping system that is up-to-date, well-organized, accurate, and complete.

5.2.4.1.5 Shares relevant student information with appropriate school personnel.

5.2.4.1.6 Participates in professional development to increase knowledge of content and pedagogy. Chooses professional development that is clearly aligned with the needs of the school/district/and students.

5.2.4.1.7 Engages in reflective thinking as an individual, as a team participant, or school/community member with the goal of improving instruction and learning.

**5.2.5 Student Improvement**

5.2.5.1 A satisfactory rating shall mean the teacher demonstrates acceptable performance in this component by meeting all of the criteria set forth below:

5.2.5.1.1 The state progress determination pursuant to 14 **DE Admin Code** 103 5.0 for the school in which the teacher teaches is Meets or Above Target. If the State Progress Determination is Below Target, the teacher shall meet this requirement by meeting 5.2.5.1.2, 5.2.5.1.3, 5.2.5.1.4 and 5.2.5.1.5.

5.2.5.1.2 For the aggregate group of students taught by the teacher for the previous two years the average scale scores on the DSTP in reading and math have increased, excluding those students pursuant to 14 **Del.C** §1270(c).

5.2.5.1.3 The average scale score for the groups of students disaggregated by race/ethnicity, LEP, Special education and low income have increased for the previous two (2) years on the DSTP in reading and math, provided that there were a minimum of ten (10) students in a subgroup, excluding those students pursuant to 14 **Del.C** §1270(c). If there were less than ten (10) students in a subgroup, the subgroup shall not be considered for these criteria.

5.2.5.1.4 The students currently being instructed in the teacher’s classroom in the aggregate have shown improvement on classroom based assessments, excluding those students pursuant to 14 **Del.C** §1270(c).

5.2.5.1.5 The students currently being instructed in the teacher’s classroom disaggregated by race/ethnicity, LEP, special education and low income have shown improvement on classroom based assessments, provided that there were a minimum of five (5) students in a subgroup, excluding those students pursuant to 14 **Del.C** §1270(c). If there were less than five (5) students in a subgroup, the subgroup shall not be considered for these criteria.

**6.0 Summative Evaluation Ratings**

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5)

components pursuant to 5.0.

6.2 The Summative Evaluation shall also include one of three overall ratings: “Effective”, “Needs Improvement”, or “Ineffective”.

6.2.1 Effective shall mean that the teacher has received Satisfactory Component ratings in Component 5, Student Improvement and in at least three (3) of the other four (4) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the teacher has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.2.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.

6.2.3 Ineffective shall mean that the teacher has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.3.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.

6.2.3.2 If the teacher’s overall Summative Evaluation rating is determined to be “Needs Improvement” for the third consecutive year, the rating shall be re-categorized as Ineffective.

**7.0** A pattern of ineffective teaching shall be based on the most recent appraisal ratings of a teacher using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective teaching. The following appraisal ratings shall be determined to be a pattern of ineffective teaching:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

**8.0 Improvement Plan**

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a teacher's performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject-area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

**9.0 Evaluator Credentials**

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques of observation and conferencing, content and relationships of frameworks for teaching training and a thorough review of the Technical Assistance Document.

Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

**10.0 Challenge Process**

10.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s), the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

**107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)**

1.0 The Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process.

1.1 For specialists participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective practice as defined in 7.0.

1.2 Specialist shall mean a licensed and certificated staff person who is part of the school team and delivers professional services to students, teachers, staff and/or families. Specialists include but are not limited to guidance counselors, instructional support specialists, library media specialists, school psychologists, school nurses, student support specialists, and therapeutic services specialists.

**2.0 Definitions**

"Announced Observation" shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation for the specialist may be a collection of data

over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

**“Board”** shall mean a local board of education or a charter school board of directors.

**“Certified Evaluator”** shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 9.0.

**“DPAS”** shall mean the Delaware Performance Appraisal System in effect prior to July 1, 2005.

**“Experienced Specialist”** is a specialist who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from their respective licensure body.

**“Improvement Plan”** shall be the plan that a specialist and evaluator mutually develop in accordance with section 8.0.

**“Novice Specialist”** is a specialist who holds a valid and current Initial License or holds a valid and current license from their respective licensure body and has less than three (3) years of experience as a specialist.

**“Satisfactory Component Rating”** shall mean the specialist understands the concepts of the component and the specialist’s performance in that component is acceptable.

**“Satisfactory Evaluation”** shall be used to qualify for a continuing license and shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

**“Summative Evaluation”** shall be the rating process at the conclusion of the appraisal cycle.

**“Technical Assistance Document”** shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

**“Unannounced Observation”** shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The unannounced observation for the specialist may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

**“Unsatisfactory Component Rating”** shall mean that the specialist does not understand the concepts of the component and the specialist’s performance in that component is not acceptable.

**“Unsatisfactory Evaluation”** shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

### **3.0 Appraisal Cycles**

3.1 Experienced specialists who have earned a rating of “Effective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each

year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation for an experienced specialist who has earned an effective rating may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced specialists in a building who received a rating of “Effective” or “Exemplary” on the most recent DPAS Performance Appraisal Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Experienced specialists who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.

3.3 Novice specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.

### **4.0 Technical Assistance Document**

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

### **5.0 Appraisal Criteria**

5.1 The following five (5) components shall be the basis upon which the performance of a specialist shall be evaluated by a certified evaluator:

## 5.1.1 Planning and Preparation

5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students/clients/school/district.

5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.

5.1.1.3 Demonstrating Knowledge of Students/Clients: Specialist shows knowledge of the needs and characteristics of the students/clients, including their approaches to learning, knowledge, skills, and interests.

5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that supports the goals of the program.

## 5.1.2 Professional Practice and Delivery of Services

5.1.2.1 Creating an Environment to Support Student/Client Needs: Specialist creates an environment in which student/client needs are identified and valued. Specialist/student/client interactions show rapport that is grounded in mutual respect.

5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students/clients.

5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students'/clients' age, background, needs, or level of understanding.

5.1.2.4 Delivering Services to Students/Clients: Specialist is responsive to the identified needs of the students/clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students/clients. The delivery of service is coherent.

## 5.1.3 Professional Collaboration and Consultation

5.1.3.1 Collaborating with Others: Specialist develops partnerships with school staff or external agencies to provide integrated services that meet student/client needs.

5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school-wide issues, problems, or concerns.

5.1.3.3 Providing Resources and Access: Specialist provides school-based resources to appropriate staff/students/clients or gives information about the effective use of the resources.

5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his/her professional standards of practice, including issues surrounding confidentiality.

## 5.1.4 Professional Responsibilities

## 5.1.4.1 Communicating with Families and

School Staff: Specialist shares information in a variety of ways about school programs available to students and families. Specialist develops two-way communication with school staff and families about student progress, behavior, personal needs, or concerns.

5.1.4.2 Developing a Record System: Specialist keeps student/client records relevant to their services and shares information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Specialist participates in professional development to increase his/her knowledge of professional practice and delivery of service. Specialist chooses professional development that is aligned with the needs of the school/district/students/clients.

5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving professional practice and delivery of service.

## 5.1.5 Student Improvement

5.1.5.1 Showing Improvement on the DSTP: Specialist uses DSTP data analysis to inform school improvement and program decisions and participates in school improvement work.

5.1.5.2 Using Assessments to Promote Student/Client Improvement: Specialist creates or uses dependable assessments that accurately measure student/client needs, status, or performance and uses the assessment results to design services or programs to promote improvement.

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

## 5.2.1 Planning and Preparation

5.2.1.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 3 of the following 4 criteria:

5.2.1.1.1 Consistently designs activities and plans for service that support the needs of the students/clients/ school/district.

5.2.1.1.2 Effectively uses practices and models of delivery that are aligned with local and national standards.

5.2.1.1.3 Shows a deep knowledge of the needs and characteristics of the students/clients and their approaches to learning, knowledge, skills, and interests.

5.2.1.1.4 Selects appropriate resources, either within or outside of the school, that support the goals of the program.

## 5.2.2 Professional Practice and Delivery of Services

5.2.2.1 A satisfactory rating for this

component shall mean the specialist demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

5.2.2.1.1 Creates an environment in which student/client needs are identified and valued.

5.2.2.1.2 Interacts with students/clients in ways that show rapport and that is grounded in mutual respect.

5.2.2.1.3 Has an extensive repertoire of instructional or professional strategies and makes effective modifications to services based on needs of the students/clients.

5.2.2.1.4 Communicates clearly and appropriately with regard to students'/clients' age, background, needs, or level of understanding.

5.2.2.1.5 Provides services that are responsive to the identified needs of the students/clients and meets standards of professional practice.

5.2.2.1.6 Selects resources and materials that are suitable and match the needs of the students/clients.

5.2.2.1.7 Delivers coherent services.

5.2.3 Professional Collaboration and Consultation

5.2.3.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 4 of the following 5 criteria:

5.2.3.1.1 Develops partnerships with school staff or external agencies to provide integrated services that meet student/client needs.

5.2.3.1.2 Shares expertise with school staff to assist them in their work or responds to school-wide issues, problems, or concerns.

5.2.3.1.3 Provides school-based resources to appropriate staff/students/clients or gives appropriate information about the effective use of the resources.

5.2.3.1.4 Assists staff/students/clients in gaining access to resources outside of the school community that will meet identified needs.

5.2.3.1.5 Adheres to professional standards of practice, including issues surrounding confidentiality.

5.2.4 Professional Responsibilities

5.2.4.1 A satisfactory rating for this component shall mean the specialist demonstrates acceptable performance by meeting at least 5 of the following 7 criteria:

5.2.4.1.1 Shares information in a variety of ways about school programs available to students and families.

5.2.4.1.2 Develops two-way communication with school staff and families about student progress, behavior, personal needs, or concerns.

5.2.4.1.3 Keeps accurate and up-to-date student/client records relevant to provided services.

5.2.4.1.4 Shares information with appropriate school personnel.

5.2.4.1.5 Participates in professional development to increase knowledge of professional practice and delivery of service.

5.2.4.1.6 Chooses professional development that is aligned with the needs of the school/district/ students/clients.

5.2.4.1.7 Engages in reflective thinking as an individual, as a team participant, or as a school/community member with the goal of improving professional practice and delivery of service.

5.2.5 Student Improvement

5.2.5.1 A satisfactory rating shall mean the specialist demonstrates acceptable performance in this component by meeting **all of** the criteria set forth below:

5.2.5.1.1 The state progress determination pursuant to 14 DE Admin Code 103 5.0 for the school in which the specialist serves is Meets or Above Target. If the State Progress Determination is Below Target, the specialist shall meet this requirement by meeting 5.2.5.1.2, 5.2.5.1.3 and 5.2.5.1.4.

5.2.5.1.2 The average scale score for the aggregate group of students served by the specialist for the previous two (2) years on the DSTP in reading and math have increased, excluding those students pursuant to 14 DE Code 1270 ©).

5.2.5.1.3 The average scale score for the groups of students disaggregated by race/ethnicity, LEP, Special education and low income have increased for the previous two (2) years on the DSTP in reading and math, provided that there were a minimum of ten (10) students in a subgroup, excluding those students pursuant to 14 DE Code 1270(c). If there were less than ten (10) students in a subgroup, the subgroup shall not be considered for these criteria.

5.2.5.1.4 The specialist can demonstrate specific contributions to students or staff which contribute to improved student achievement.

## **6.0 Summative Evaluation Ratings**

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".

6.2.1 Effective shall mean that the specialist has received Satisfactory Component ratings in Component 5, Student Improvement and in at least three (3) of the other four (4) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the specialist has received at least three (3) Satisfactory Component ratings out of the five (5) components of the

appraisal criteria.

6.2.2.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.

6.2.3 Ineffective shall mean that the specialist has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.3.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.

6.2.3.2 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

**7.0** A pattern of ineffective practice shall be based on the most recent appraisal ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following appraisal ratings shall be determined to be a pattern of ineffective practice:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

## **8.0 Improvement Plan**

8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a specialist's performance during an

observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject-area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

## **9.0 Evaluator Credentials**

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

## **10.0 Challenge Process**

10.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions

of an observation if the statement “PERFORMANCE IS UNSATISFACTORY” has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the specialist’s receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s) the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

### **108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)**

1.0 The Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) shall be effective for only those districts participating in the pilot of this process.

1.1 For administrators participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective administration as defined in 7.0.

1.2 For purposes of this regulation, an administrator is a professional employee of a board in a supervisory capacity involving the oversight of an instructional program(s).

## **2.0 Definitions**

“**Board**” shall mean the local board of education or charter school board of directors.

“**Certified Evaluator**” shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 9.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 9.0.

“**DPAS**” shall mean the Delaware Performance Appraisal System in effect prior to July 1, 2005.

“**Experienced Administrator**” shall mean an administrator who has three (3) or more years of service as an administrator.

“**Formative Process**” shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences/

reports.

“**Improvement Plan**” shall be the plan that an administrator and evaluator mutually develop in accordance with section 8.0.

“**Inexperienced Administrator**” shall mean an administrator who has less than three (3) years of service as an administrator.

“**Satisfactory Component Rating**” shall mean the administrator understands the concepts of the component and the administrator’s performance in that component is acceptable.

“**Satisfactory Evaluation**” shall be used for to qualify for a continuing license and shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“**Summative Evaluation**” shall be the rating component at the conclusion of the appraisal cycle.

“**Technical Assistance Document**” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

“**Unsatisfactory Component Rating**” shall mean the administrator does not understand the concepts of the component and the administrator’s performance in that component is not acceptable.

“**Unsatisfactory Evaluation**” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

## **3.0 Appraisal Cycles**

3.1 Experienced administrators who have earned a rating of “Effective” on their most recent Summative Evaluation shall go through a minimum of one (1) Formative Process each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation may be waived for the subsequent year but not for two (2) consecutive years. Up to one half of the experienced administrators in a building who received a rating of “Effective” or “Exemplary” on the most recent Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Experienced administrators who have earned a rating of “Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall go through a minimum of two (2) Formative Process(es) with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require an administrator to go through additional Formative Process(es) or other types of monitoring as outlined in the Technical Assistance Document.

3.3 Inexperienced administrators shall go through a minimum of two (2) Formative Process(es) with a Summative Evaluation at the end of the one year period. Inexperienced administrators who have earned a rating of

“Needs Improvement” or “Ineffective” on their most recent Summative Evaluation shall have an Improvement Plan which may require an administrator go through additional Formative Process(es) or other types of monitoring as outlined in the Technical Assistance Document.

#### **4.0 Technical Assistance Document**

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.1.1 The Document shall contain at a minimum the following:

4.1.1.1 Specific details about each of the four (4) components pursuant to 5.0.

4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process including the Formative Process, Summative Evaluation, Improvement Plan and Challenge Form.

4.1.1.3 Specific procedures for the Formative Process, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

#### **5.0 Appraisal Criteria**

5.1 The following four (4) components shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):

5.1.1 Assessment of Leader Standards: This relates to the Delaware Standards for School Leaders as defined in 14 DE Admin Code 1594.

5.1.2 Assessment of Goals and Priorities: Professional goals that have been established based on a variety of data sources related to the need of the school or district administrator and his/her job responsibilities.

5.1.3 Assessment on the School or District Improvement Plan: The various goals and objectives in the school or district improvement plan(s) and the contributions of the administrator in achieving those goals.

5.1.4 Assessment on Measures of Student Improvement:

5.1.4.1 Student improvement on the DSTP as determined by school or district accountability ratings, and student performance on the DSTP as reported in DSTP-OR.

5.1.4.2 Student learning on district-adopted norm and criterion-referenced assessments. Assessments selected by districts to measure quality and equity of student learning across all content areas.

5.1.4.3 Other measures of student performance that are used by teachers in the school are standards-based and DSTP-like.

5.2 Each of the four (4) components shall be equally weighted and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Assessment of Leader Standards:

5.2.1.1 A satisfactory rating for this component shall mean the aggregated assessment on the Delaware Performance Appraisal System surveys from those individuals who the administrator supervises, the administrator himself/herself, and the supervisor reveal a pattern of proficient or accomplished skills on the Delaware Standards for School Leaders.

5.2.2 Assessment of Goals and Priorities:

5.2.2.1 There is adequate progress on the administrator’s professional goals.

5.2.3 Assessment on the School or District Improvement Plan:

5.2.3.1 There is growth in the goals and objectives in the school or district improvement plan.

5.2.4 Assessment on Measures of Student Improvement:

5.2.4.1 A satisfactory rating for this component shall mean the administrator demonstrates acceptable performance by meeting 5.2.4.1.1 and 5.2.4.1.2 and by meeting at least 4 of the additional 5 criteria set forth below.

5.2.4.1.1 DSTP results show student performance has improved.

5.2.4.1.2 Based on the formula for obtaining the school accountability rating, there are consistent indicators of improvement in school accountability.

5.2.4.1.3 Makes progress on targets for student improvement on the DSTP.

5.2.4.1.4 There is improvement on goals established for the equitable distribution of learning outcomes based on race, gender, socio-economic status, and language proficiency.

5.2.4.1.5 There is consistent evidence of improvement on district-adopted norm and criterion-referenced assessments.

5.2.4.1.6 There is improvement in the percent of students who are meeting the targets for school or district accountability.

5.2.4.1.7 There is improvement on student attendance or graduation rates.

#### **6.0 Summative Evaluation Ratings**

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the four (4) components pursuant to 5.0.

6.2 The Summative Evaluation shall also include one of three overall ratings: “Effective”, “Needs Improvement” or “Ineffective”.

6.2.1 Effective shall mean that the administrator

has received Satisfactory Component ratings in all four (4) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the administrator has received one (1) Unsatisfactory Component rating out of the four (4) components of the appraisal criteria.

6.2.2.1 An administrator who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available.

6.2.3 Ineffective shall mean that the administrator has received two (2) or more Unsatisfactory Component ratings out of the four (4) components of the appraisal criteria.

6.2.3.1 An administrator who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available.

6.2.3.2 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

**7.0** A pattern of ineffective administrative performance shall be based on the most recent appraisal ratings of an administrator using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective administration. The following appraisal ratings shall be determined to be a pattern of ineffective administration:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Ineffective	Needs Improvement	Ineffective
Needs Improvement	Ineffective	Ineffective

### **8.0 Improvement Plan**

8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if an administrator's performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or other administrator(s) with relevant experience;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

### **9.0 Evaluator(s) Credentials**

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

### **10.0 Challenge Process**

10.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the

Overall Rating, or an administrator may challenge the conclusions of the Formative Process if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of information from the Formative Process, the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

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**Education Impact Analysis  
Pursuant To  
14 DEL.C. §122(d)**

**501 State Content Standards**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 501 State Content Standards by removing the reference to the Standards for Functional Life Skills Curriculum in 1.1 because federal regulations no longer allow the use of separate functional standards that are aligned to academic content standards. For the past five years, the Standards for Functional Life Skills Curriculum served as the foundation of the Delaware Alternative Portfolio Assessment (DAPA), an assessment system designed for students with the most significant cognitive disabilities. The No Child Left behind Act (NCLB) requires that all students be assessed on the same academic content standards. In addition, the 1997 re-authorization of IDEA mandates that students with disabilities have access to and make progress in the general curriculum.

The No Child Left behind Act (NCLB) allows students in the alternate assessment to have different access points to the academic content standards. Existing performance indicators within the Delaware content standards do not adequately address the educational issues of all students who

participate in the alternate assessment. Therefore, it was necessary to develop Extended Performance Indicators (ExPIs), which are embedded functional skills within the academic content standards. Unlike the DSTP, the DAPA-II may use off-grade PIs or ExPIs. The Individual Education Plan (IEP) team will select which standards and corresponding performance indicators (PIs or ExPIs) may be used in the student's IEP. The IEP does not have to link to all standards. The Extended Performance Indicators will not become part of the regulations but State Board of Education approval will be requested as was done in the case of the indicators in other content areas.

**C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The amendment to the regulation places the focus on the standards for English language arts, mathematics, science and social studies as the standards to use for all students to improve their achievement.

2. Will the regulation help ensure that all students receive an equitable education? The regulation mandates the alignment of all curriculum with the state content standards and the amendment removes the reference to the Functional Skills Curriculum Standards as an alternative for certain students. As per No Child Left Behind all children shall meet the same standards.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amendments to the regulation do not address health and safety issues.

4. Will the regulation help to ensure that all students' legal rights are respected? The amendments to the regulation ensure that all students meet the same standards which is their legal right under No Child Left Behind.

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

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

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

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

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

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

### **501 State Content Standards**

#### **1.0 Instructional Programs**

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, and the Family and Consumer Sciences Content Standards ~~and the Standards for Functional Life Skills Curriculum.~~

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.2 Integration of the content standards shall be provided for within and across the curricula.

1.1.3 Instructional materials and curricula content shall be kept current and consistent with the Guidelines for the Selection of Instructional Materials.

**1 DE Reg. 153 (8/1/97)**

**1 DE Reg. 729 (12/1/97)**

**4 DE Reg. 343 (8/1/00)**

**4 DE Reg. 850 (10/1/00)**

**4 DE Reg. 853 (11/1/00)**

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

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### **Education Impact Analysis Pursuant To 14 DEL.C. §122(d)**

#### **718 Health Examinations for School District Employees**

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

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 718 Health Examinations for School District Employees in order to change the reference in the title and in 1.0 to all employees of school districts, charter schools, and alternative programs instead of school district employees and to require that the certification of health be placed in the employee's personnel file.

##### **C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation addresses physical examinations for employees of school districts, charter schools and alternative programs not student achievement.

2. Will the regulation help ensure that all students receive an equitable education? The regulation addresses physical examinations for school employees not equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses physical examinations for school employees which may impact on students' health.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulation addresses physical examinations for school employees not students' legal rights.

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

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

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

8. Will the 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? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State or to the local school boards of compliance with the regulation.

### ~~718 Health Examinations for School District Employees~~

~~1.0 At initial employment in a school district, all employees shall file, together with other employment credentials, a physician's certification that he or she is free from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and which cannot be remedied through reasonable accommodations.~~

### 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

1.0 At initial employment, all employees of school districts, charter schools and alternative programs shall provide a physician's certification that he or she is free from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and which cannot be remedied through reasonable accommodations. The physician's certification, along with any other medical information, shall be retained in the individual's personnel file.

Non regulatory note: See 14 Admin. Code 805 The School Health Tuberculosis Control Program for TB screening and testing. Also, see 21 Del.C. §2708 and 14 DE Admin. Code 1105 for requirements for school bus drivers.

## Education Impact Analysis

### Pursuant To 14 DEL.C. §122(d)

### **805 The School Health Tuberculosis (TB) Control Program**

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

Amendment to Existing Regulation

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

The Secretary of Education intends to amend regulation 805 The School Health Tuberculosis (TB) Control Program. The amendments change the requirement for school staff and new school enterers concerning the Mantoux tuberculin skin test.

School staff continue to be required to have the Mantoux tuberculin skin test within 12 months of employment and be assessed; but every five years thereafter the assessment will be done via the *Department of Education TB Health Questionnaire for School Employees* rather than a Mantoux tuberculin skin test as previously required.

All new school enterers shall show proof of Mantoux tuberculin skin test results from a test administered within the past 12 months or the results of a TB risk assessment questionnaire which may be administered by the school nurse and the definition of "new school enterers" has been changed.

Procedures for volunteers 2.0 and positive reactors 4.0 remain the same.

This regulation was advertised previously in the May 1,200 Register of Regulations, Volume 7 Issue 11. The regulation is being re-advertised because of a change in the last sentence in 3.1. It now states that a new school enterer shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB exposure. The amount of time referred to is now one month instead of six months.

#### **C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses TB testing not achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation addresses TB testing not equity issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses TB testing which is a health and safety issue and the change from requiring a skin test to using a questionnaire is recommended by the Delaware Division of

Public Health.

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

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will add the process of administering the questionnaire but will substantially reduce the amount of actual testing.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? No, there is not a less burdensome method for addressing the purpose of the regulation than amending the regulation.

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

### **805 The School Health Tuberculosis (TB) Control Program**

~~1.0 School Employees, Substitutes, Student Teachers, and Contract Employees — All school employees, substitutes, student teachers, and contract employees (including bus drivers) shall receive the Mantoux tuberculin skin test or show proof of being tested in the past 12 months during the first 15 working days of employment.~~

~~1.1 Present employees, substitutes, and contract employees shall show proof of Mantoux tuberculin skin test results to the district designee by October 15, every fifth year of employment.~~

~~1.2 Student teachers need not be retested if they move from district to district as part of their student teaching~~

~~assignments.~~

~~2.0 Volunteers — Volunteers, those persons who give their time to help others for no monetary reward and who share the same air space with students and staff on a regularly scheduled basis, shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools prior to their assignment. Should the volunteer answer affirmatively to any of the questions, he/she must provide proof of a Mantoux tuberculin skin test in the past 12 months before beginning their assignment.~~

~~2.1 Volunteers shall complete the Delaware Department of Education's Health Questionnaire for Volunteers in Public Schools every fifth year.~~

~~2.1.1 The district designee(s) shall collect and monitor the volunteer questionnaires. These questionnaires will be stored in the School Nurse's office in a confidential manner.~~

~~3.0 Students — All new school enterers shall show proof of a Mantoux tuberculin skin test results within the past 12 months or follow the recommendations of the American Academy of Pediatrics (AAP). Health Care Providers must send documentation of the decisions. Multi-puncture skin tests will not be accepted. A school enterer is defined as any child between the ages of one year and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools.~~

~~3.1 School nurses shall record the results of the Mantoux tuberculin skin test in the School Health Record.~~

~~3.2 Tuberculin skin test requirements may be waived for children whose parent(s) or guardian(s) present a notarized document that tuberculin skin testing is against their religious beliefs.~~

### ~~4.0 Positive Reactors~~

~~4.1 Positive reactors (those currently identified and those with a history) need verification from a Health Care Provider or Division of Public Health indicating:~~

~~4.1.1 Skin test reaction recorded in millimeters.~~

~~4.1.2 Current disease status, i.e. contagious or non-contagious.~~

~~4.1.3 Current treatment, completion of preventive treatment for TB infection, or chemotherapy for TB disease.~~

~~4.1.4 Date when the individual may return to their school assignment without posing a risk to the school setting.~~

~~4.2 If documentation of the test is available, the known positive reactor need not have this tuberculin skin test but provide the above information related to disease status and treatment.~~

4.2.1 Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.

4.3 If documentation of the test is unavailable, the individual should be tested. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.

4.4 Updated information regarding disease status and treatment shall be provided to the district designee by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

See 1 DE Reg. 1971 (6/1/98)

See 3 DE Reg. 440 (9/1/99)

## 805 The School Health Tuberculosis (TB) Control Program

### 1.0 School Staff and Extended Services Personnel

#### 1.1 Definition

**“School Staff and Extended Services Personnel”** means all persons hired as full or part time employees in a public school who are receiving compensation to work directly with students and staff. This includes, but is not limited to teachers, administrators, substitutes, contract employees, bus drivers and student teachers whether compensated or not.

1.2 Public school staff and extended services personnel shall provide the Mantoux tuberculin skin test results from a test administered within the past 12 months during the first 15 working days of employment.

1.2.1 Student teachers need not be retested if they move from district to district as part of their student teaching assignments.

1.3 Every fifth year, by October 15th, public school staff and extended services personnel shall complete the *Department of Education TB Health Questionnaire for School Employees* and the questionnaire responses shall be retained in the individual’s personnel file.

1.3.1 If a public school staff member or extended services personnel staff member answers affirmatively to any of the questions, he/she shall provide proof of Mantoux tuberculin skin test results from a test administered in the past 6 months by October 30th.

### 2.0 Volunteers

#### 2.1 Definition:

**“Volunteers”** mean those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.2 Volunteers shall complete the *Delaware Department of Education’s Health Questionnaire for Volunteers in Public Schools* prior to their assignment and

every fifth year thereafter.

2.2.1 If the volunteer answers affirmatively to any of the questions, he/she must provide proof of Mantoux tuberculin skin test results from a test administered in the past 12 months before beginning his/her assignment.

2.3 Each public school (s) shall collect and monitor these questionnaires and store them in the School Nurse’s office in a confidential manner.

### 3.0 Students

#### 3.1 Definition:

**“New School Enterer”** means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, “new school enterer” shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB exposure.

3.2 All new public school enterers shall show proof of Mantoux tuberculin skin test results from a test administered within the past 12 months or the results of a TB risk assessment questionnaire.

3.2.1 Health Care Providers must send documentation of the test results or the risk assessment. Multi-puncture skin test results will not be accepted.

3.2.2 Public school nurses who are trained in the use of the *Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to parents, guardians or Relative Caregivers or to a school enterer who has reached the statutory age of majority (18) if the new enterer is in compliance with the other public school entry requirements for a current physical examination and up-to-date immunizations.

3.2.3 Public school nurses shall record the findings of the *Department of Education TB Risk Assessment Questionnaire for Students* and/or the results of the Mantoux tuberculin skin test in the School Health Record.

3.2.4 Tuberculin skin test requirements may be waived for public school children whose parent(s) or guardian(s) or Relative Caregiver(s) or a school enterer who has reached the statutory age of majority (18) presents a notarized document that tuberculin skin testing is against their religious beliefs.

### 4.0 Positive Reactors

#### 4.1 Definition:

**“Positive Reactor”** means an individual currently identified as having TB or an individual with a history of TB.

4.2 Positive Reactors need verification from a Health

Care Provider or the Division of Public Health indicating the:

4.2.1 Skin test reaction recorded in millimeters;

4.2.2 Current disease status, i.e. contagious or non-contagious;

4.2.3 Current treatment, completion of preventive treatment for TB infection, or chemotherapy for TB disease and;

4.2.4 Date when the individual may return to their school assignment without posing a risk to the school setting.

4.3 If documentation of the test is available, the known positive reactor need not have this tuberculin skin test but provide the information in 4.2.2 through 4.2.4 related to disease status and treatment.

4.3.1 Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.

4.3.2 If documentation of the test is unavailable, the individual should be re-tested or re-assessed. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.

4.4 In the event the positive reactor shows any signs or symptoms of active TB infection, he/she must be excluded from school until all required medical verification is received by the school.

4.5 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.

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## PROFESSIONAL STANDARDS BOARD

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

#### 368 Certification School Psychologist

#### A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend **DE Admin. Code** 368 Certification School Psychologist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with current statute and regulations concerning licensing and certification

of educators and to align it with standards set forth for school psychologists by the National Association of School Psychologists and the American Psychological Association. The regulation will be renumbered 1577 to reflect its movement to the Professional Standards Board section of the Department of Education regulations and will be renamed Standard Certificate – School Psychologist to make it consistent with the nomenclature of other Standard Certificate regulations.

#### C. Impact Criteria

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety. Appropriately trained and certified school psychologists, however, are essential to students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights. Students' legal rights, however, will be respected by ensuring that school psychologists are adequately and appropriately prepared.

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the new regulation? Title 14 of the Delaware Code requires that we promulgate this regulation.

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

### **368 – Certification School Psychologist Effective July 1, 1993**

1.0 The following shall be required for the Standard License:

1.1 A graduate degree (Master's, Educational Specialist, Ph.D., Psy.D., or Ed.D. from an NCATE, NASDTEC, or American Psychological Association accredited school psychology program) that requires a minimum of 60 graduate semester hours consisting of course work, practica, and internship, or holds National School Psychology Certification granted by the National School Psychology Certification Board or:

1.2 A minimum of 60 graduate semester hours (including at least a Master's degree from an accredited college) distributed as specified across the following eight categories of course work and experiences. The course work experiences should provide evidence of the ability to acquire, integrate, and express factual and theoretical information, and the ability to make inferences, interpretations, and conclusions from conceptual and experimental research of applications in each of the skill areas represented by the categories below:

1.2.1 Nine graduate semester hours in psychological foundations covering the following skill areas: Child and Adolescent Development, Human Learning, Child Psychopathology, Human Exceptionalities, Social Bases of Behavior, Biological Bases of Behavior, Cultural Diversity.

1.2.2 Twelve graduate semester hours in assessment covering the administration and interpretation of assessments in each of the areas of Intelligence Testing, Personality Assessment, Behavioral Assessment; and

Psycho-Educational Assessment.

1.2.3 Six graduate semester hours in research, design, statistics and measurement covering the areas of Research Design, Statistics, and Test and Measurement.

1.2.4 Nine graduate semester hours in intervention techniques covering the areas of Counseling, Consultation, Behavior Management, and Curriculum Development or Remedial/Special Education Techniques.

1.2.5 Six graduate semester hours in educational foundations covering the areas of Education of Exceptional Learners, Instruction and Remedial Techniques, Organization/Operation of Schools; and Foundations of Education.

1.2.6 Three graduate semester hours in professional school psychology including the areas of History/Foundations of School Psychology, Related Legal/Ethical Issues; and Professional Issues/Standards.

1.2.7 Three graduate semester hours of electives in psychology/related areas.

1.2.8 Twelve graduate semester hours of an internship.

1.2.8.1 Twelve hundred (1,200) clock hours—100 clock hours per semester hour—of supervised, on-site field experience. At least 600 clock hours (6 semester hours) of the internship must be served in a school setting under the supervision of a licensed or certified school psychologist. No more than 600 of the required clock hours may be completed in a non-school setting. Supervision in a non-school setting must be provided by personnel holding an appropriate credential for that setting. The internship experience cannot begin until all other course requirements are completed and verified.

2.0 The following shall be required for the Limited Standard License (not renewable):

2.1 The Limited Standard License may be issued for a period not exceeding three years at the request of a Delaware Public School district to a person who meets the requirements listed below and who is employed as a School Psychologist to allow for the completion of the requirements for the professional License as listed in 1.0.

2.1.1 Master's (or more advanced) degree from an accredited college and;

2.1.2 Specific Requirements

2.1.2.1 Within nine semester hours of meeting course work as required in 1.2.1 through 1.2.7 and with a completed internship or related experience.

3.0 The following shall be required for a Temporary License (not renewable):

3.1 The Temporary License may be issued for a period of one year at the request of a Delaware Public School District to a person who meets the requirements listed below, and who is employed as a School Psychologist to allow for

the completion of the requirements for the Standard License as listed in 1.0.

3.1.1 ~~Master's (or more advanced) degree from an accredited college and;~~

3.1.2 ~~Specific Requirements~~

3.1.2.1 ~~With the completion of all required course work, but not the required internship, one year of successful, full-time work experience under the supervision of an approved internship supervisor, in a position covered by this License, can be approved to satisfy the internship experience.~~

4.0 Licenses that may be issued for this position include Standard, Limited Standard and Temporary.

**1577 Standard Certificate – School Psychologist**

**1.0 Content.**

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School Psychologist.

**2.0 Definitions.**

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

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

**“Internship”** means a supervised, culminating, comprehensive field experience, completed at or near, the end of formal training, through which school psychology candidates have the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica, as well as to acquire new competencies consistent with training program goals.

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

**“School Setting”** means a setting in which the primary goal is the education of students of diverse backgrounds, characteristics, abilities, disabilities, and needs who are enrolled in grades pK-12.

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

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

3.1 A bachelor's degree in any content area from a

regionally accredited college or university; and

3.2 Completion of an organized graduate level program of study approved by the National Association of School Psychologists (NASP) or the American Psychological Association (APA) offered by a regionally accredited college or university titled “School Psychology”, consisting of a minimum of 60 graduate level credit hours, of which at least 54 credits are exclusive of an internship; and

3.2.1 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full-time or half-time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting; or

3.3 Completion of an organized graduate level program of study offered by a regionally accredited college or university titled “School Psychology”, consisting of a minimum of 60 graduate level credit hours, of which at least 54 credits are exclusive of an internship; and

3.3.1 Evidence of substantial graduate-level preparation in the following areas. Substantial preparation may be acquired through one or more courses devoted specifically to an area, or significant portions of one or more courses. Candidates may be required to provide additional documentation to demonstrate such preparation.

3.3.1.1 Data-based Decision-Making and Accountability: Coursework and practicum/internship experiences that demonstrate knowledge and skills on the use of various models and methods of assessment that yield information for identifying strengths and needs, understanding problems, identifying disabilities, and measuring progress and accomplishments;

3.3.1.2 Consultation and Collaboration: Coursework and practicum/internship experiences that demonstrate knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and their application to planning and decision-making processes at the individual, group, and system levels;:

3.3.1.3 Effective Instruction and Development of Cognitive/Academic Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills. Coursework in this area includes but is not limited to development of instructional interventions;:

3.3.1.4 Socialization and Development of Life Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills. Coursework in this area includes behavioral assessment/intervention, and counseling;:

3.3.1.5 School and Systems Organization,

Policy Development, and Climate: Coursework and practicum/internship experiences that demonstrate knowledge of policies and practices in general education, special education, and other educational and related services systems. Coursework in this area includes attention to the development of policies and practices that create and maintain safe, supportive, and effective learning environments for children and others;:

3.3.1.6 Prevention, Crisis Intervention, and Mental Health: Coursework and practicum/internship experiences that demonstrate knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Coursework in this area includes promotion of student mental health and knowledge of crisis intervention procedures;

3.3.1.7 Home/School/Community Collaboration: Coursework and practicum/ internship experiences that demonstrate knowledge of family systems, including family strengths and influences on student development, learning, and behavior; and of methods to involve families in education and service delivery;

3.3.1.8 Research and Program Evaluation: Coursework and practicum/ internship experiences that demonstrate knowledge of research, statistics, and evaluation methods. Coursework in this area includes content related to evaluating research, translating research into practice, and understanding research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services;

3.3.1.9 School Psychology Practice and Development: Coursework and practicum/internship experiences that demonstrate knowledge of the history and foundations of the profession of school psychology; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards;

3.3.1.10 Student Diversity in Development and Learning: Coursework and practicum/internship experiences that demonstrate knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; and

3.3.1.11 Information Technology: Coursework and practicum/internship experiences the demonstrate knowledge of information sources and technology relevant to their work, including the ability to access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services; and

3.3.2 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full-time or half-time over a period of no

more than two consecutive years, at least 600 hours of which must be in a school setting; or

3.4 A valid certificate from the National School Psychology Certification Board (NCSP); or

3.5 A valid certificate in school psychology from another State Department of Education in the U.S.; or

3.6 A valid license as a psychologist issued by the Delaware Board of Examiners of Psychologists, and

3.6.1 Evidence of substantial graduate-level preparation in the following areas. Substantial preparation may be acquired through one or more courses devoted specifically to an area, or significant portions of one or more courses. Candidates may be required to provide additional documentation to demonstrate such preparation.

3.6.1.1 Data-based Decision-Making and Accountability: Coursework and practicum/internship experiences that demonstrate knowledge and skills on the use of various models and methods of assessment that yield information for identifying strengths and needs, understanding problems, identifying disabilities, and measuring progress and accomplishments;

3.6.1.2 Consultation and Collaboration: Coursework and practicum/ internship experiences that demonstrate knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to planning and decision-making processes at the individual, group, and system levels;

3.6.1.3 Effective Instruction and Development of Cognitive/Academic Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills. Coursework in this area includes development of instructional interventions;

3.6.1.4 Socialization and Development of Life Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills. Coursework in this area includes behavioral assessment/intervention, and counseling;:

3.6.1.5 School and Systems Organization, Policy Development, and Climate: Coursework and practicum/internship experiences that demonstrate knowledge of policies and practices in general education, special education, and other educational and related services systems. Coursework in this area includes attention to the development of policies and practices that create and maintain safe, supportive, and effective learning environments for children and others;:

3.6.1.6 Prevention, Crisis Intervention, and Mental Health: Coursework and practicum/internship

experiences that demonstrate knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Coursework in this area includes promotion of student mental health and knowledge of crisis intervention procedures;

3.6.1.7 Home/School/Community

Collaboration: Coursework and practicum/internship experiences that demonstrate knowledge of family systems, including family strengths and influences on student development, learning, and behavior; and of methods to involve families in education and service delivery;

3.6.1.8 Research and Program Evaluation:

Coursework and practicum/internship experiences that demonstrate knowledge of research, statistics, and evaluation methods. Coursework in this area includes content related to evaluating research, translating research into practice, and understanding research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services;

3.6.1.9 School Psychology Practice and

Development: Coursework and practicum/internship experiences that demonstrate knowledge of the history and foundations of the profession of school psychology; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards;

3.6.1.10 Student Diversity in Development and

Learning: Coursework and practicum/internship experiences that demonstrate knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; and

3.6.1.11 Information Technology: Coursework

and practicum/internship experiences the demonstrate knowledge of information sources and technology relevant to their work, including the ability to access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services; and:

3.6.2 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full-time or half-time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting. Applicants who meet all of the requirements above except 600 hours of internship in a school setting may complete the school-based internship requirements under an emergency certificate.

**4.0 Internship.**

4.1 An internship must be in an institution or agency approved by the DOE or the applicant's graduate program. The internship placement agency provides appropriate

support for the internship experience including:

4.1.1 A written agreement specifying the period of appointment and any terms of compensation;

4.1.2 A schedule of appointments, expense reimbursement, a safe and secure work environment, adequate office space, and support services consistent with that afforded to school psychologists employed by the approved internship institution or agency;

4.1.3 Provision for participation in continuing professional development activities;

4.1.4 Release time for internship supervision;  
and

4.1.5 A commitment to the internship as a diversified training experience.

4.2 An internship must be supervised by a certified school psychologist or state licensed psychologist who has a minimum of three (3) years experience as a practicing school psychologist and who has experienced an internship.

4.3 A licensed psychologist completing the school-based portion of the internship may be employed as a school psychologist concurrent with completion of the internship.

**5.0 Emergency Certificate**

5.1 An Emergency Certificate for a School Psychologist may only be granted to a candidate who has completed all required course work and has been accepted into a school-based internship.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

Statutory Authority: 16 Delaware Code,  
Section 3006A (16 Del.C. §3006A)

**Regulations for Assisted Living Facilities**

**PUBLIC NOTICE**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted revised proposed Regulations for Assisted Living Facilities regarding requirements for electrical generators. The regulations, revised after public hearings on June 2 and June 3, 2004, will be the subject of a further public hearing on August 5, 2004 as described below. Comments received at the June and August public hearings regarding requirements for electrical generators will be discussed when those regulations are published as final regulations. The remainder of the proposed regulations which were the

subject of the June public hearings, pertaining to incident reporting and an exemption for individuals with subcutaneous venous ports from the prohibition against admitting residents with central lines, are published as final regulations in this edition of the Register of Regulations.

### **Invitation For Public Comment**

A public hearing will be held as follows:

Thursday, August 5, 2004  
9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments on these proposed regulations should be sent to:

Katie McMillan  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

## **PROPOSED REGULATIONS ASSISTED LIVING FACILITIES**

### **Section 63.11 Services**

63.1101 The assisted living facility shall ensure that:

A. Three meals, snacks and prescribed food supplements are available during each 24-hour period, 7 days per week;

B. Meals and snacks are varied, palatable, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the special dietary needs of each resident;

C. Food service complies with the Delaware Food Code; and

D. A resident who chooses not to follow prescribed dietary recommendations shall be provided documented counseling on potential adverse outcomes.

E. A three-day supply of non-perishable food is maintained for use in emergencies.

63.1102 As part of the licensure approval and renewal process, an assisted living applicant or licensee shall submit at least a 4-week menu cycle with documentation by a dietician or nutritionist that the menus are nutritionally

adequate. Thereafter, menus are to be written at least one week in advance and maintained on file, as served, for two months.

63.1103 The assisted living facility shall ensure that the resident's service agreement is being properly implemented.

63.1104 In accordance with the service agreement, the assisted living facility shall provide or ensure the provision of all necessary personal services, including all activities of daily living, and shall ensure that personal care supplies are available.

63.1105 The assisted living facility shall ensure that laundry and housekeeping services are offered and that all areas of the facility are maintained in a clean and orderly condition.

63.1106 In accordance with the service agreement, the assisted living facility shall be responsible for facilitating access to appropriate health care and social services for the resident.

63.1107 The assisted living facility shall assess each resident and provide or arrange appropriate opportunities for social interaction and leisure activities which promote the physical and mental well-being of each resident, including facilitating access to spiritual activities consistent with the preferences and background of the resident.

### **Section 63.16 Environment And Physical Plant**

63.1601 Each assisted living facility shall comply with applicable federal, state and local laws including:

- A. Rehabilitation Act, Section 504;
- B. Fair Housing Act as amended; and
- C. Americans with Disabilities Act.

63.1602 Assisted living facilities shall:

- A. Be in good repair;
- B. Be clean;
- C. Have a hazard-free environment; and
- D. Have an effective pest control program.

63.1603 Heating and cooling systems in common areas shall be maintained at a temperature between 71° F and 81° F. A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort.

63.1604 Common areas shall be lighted to assure resident safety.

63.1605 For all new construction and conversions of assisted living facilities with more than 10 beds, there shall be at least 100 square feet of floor space, excluding alcoves, closets, and bathroom, for each resident in a private bedroom and at least 80 square feet of floor space for each resident sharing a bedroom.

A. Sharing of a bedroom shall be limited to 2 residents;

B. Each facility shall have locked storage available for the resident's valuables, in accordance with the facility's policies;

C. Bedrooms and all bathrooms used by residents in assisted living facilities, except in specialized care units for memory impairment, shall be equipped with an intercom or other mechanical means of communication for resident emergencies. For specialized care units for memory impairment, staff must be equipped to communicate resident emergencies immediately.

63.1606 Resident kitchens shall be available to residents either in their individual living unit or in an area readily accessible to each resident. Residents shall have access to a microwave or stove/conventional oven, refrigerator, and sink. The assisted living facility shall establish and adhere to policies and procedures to ensure that common kitchens are used and maintained in such a way as to provide:

- A. A clean and sanitary environment;
- B. Safe storage of food; and
- C. A means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.1607 Bathroom facilities shall be available to residents either in their individual living units or in an area readily accessible to each resident. There shall be at least 1 working toilet, sink, and tub/shower for every 4 residents.

63.1608 Hot water at resident bathing and hand-washing facilities shall not exceed 120 degrees Fahrenheit.

63.1609 An assisted living facility shall have an emergency generator(s) adequate to supply power, immediately upon cessation of normal electrical supply, to the following:

A. Illumination of means of egress in stairs, facility vestibules, corridors and ramps leading to an exit. Illumination shall not be less than one foot candle.

B. Illumination of exit signs and exit directional signs. Illumination shall not be less than one foot candle.

C. Fire detection, fire alarm and fire extinguishing systems.

D. Communication systems including telephones, public address system and nurse call or resident intercom system.

E. Lighting in dining and recreation areas to provide illumination to exit ways. Illumination shall not be less than 5 foot candles.

F. Elevator cab lighting, control, communication and signal systems sufficient to operate the elevator to release passengers trapped between floors.

G. Task illumination and at least one electrical receptacle in each area listed below. The cover plate on such receptacles shall have a distinctive color or marking.

- 1. Medication dispensing areas.
- 2. Direct care charting areas.
- 3. Location of equipment for use in resident medical emergencies.
- 4. Kitchen.

- H. Kitchen hood and/or exhaust systems.

I. Sump pump.

J. Heating, sufficient to prevent resident distress, in corridors, common areas and selected room(s) designated for congregate use during a power outage.

K. Air conditioning, sufficient to prevent resident distress, in selected room(s) designated for congregate use during a power outage.

**\*PLEASE NOTE: AS THE REMAINING SECTIONS WERE NOT AFFECTED, THEY ARE NOT BEING PUBLISHED HERE. PLEASE REFER TO PAGE 85 TO VIEW THE COMPLETE REGULATION.**

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Chapter 1, Section 122(3)c  
(16 Del.C. §122(3)c)

These regulations, "State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems," replace by revision the current "State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems" adopted September 2, 1997, and most recently amended March 10, 2001.

### **Nature Of Proceedings**

The proposed changes to the "State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems" include the addition and modification of some definitions; establishment of minimum water system visit requirements for circuit riders; and water system treatment experience requirement for operators pursuing an endorsement on their license. Additional amendments include license expiration date to be placed on the license and the establishment of a one-year revocation period before re-applying after said license has been revoked.

### **Notice Of Public Hearing**

The Office of Drinking Water, Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems. The public hearing will be held on July 28, 2004 at 2:00 p.m. in the Division of Public Health Training Center, Blue Hen Corporate Center, located on 655 S. Bay Road, Dover, Delaware.

Copies of the proposed revisions are available for review by contacting:

The Office of Drinking Water  
Blue Hen Corporate Center, Suite 203  
655 S. Bay Road  
Dover, Delaware 19901  
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by close of business, Monday, July 26, 2004. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by close of business July 30, 2004 to:

David Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, DE 19903-0637

Adopted September 2, 1997 by the Secretary, Delaware Health and Social Services under authority of 16 Delaware Code Section 122(3)(c), Revised March 10, 2001;

## 463 Licensing And Registration Of Operators Of Public Water Supply Systems

### 1.0 Purpose

It is the purpose of this regulation to protect the public health and to provide for the development and protection of the potable water supply systems of this State; to provide for the classification of public water systems; to require the licensing of operators of these systems; to provide procedures for such licensing and registration; to create an Advisory Council for Certification; to provide for reciprocal arrangements; and to prescribe penalties for violation of this regulation.

### 2.0 Definitions

**“Acceptable Experience”** means active, on-site charge and/or performance of operation of a treatment plant and/or distribution system of a public water supply and would include such activities as treatment plant startup and hands-on (in the field) operator training. “Hands-on” means the applicant has been actually operating a water treatment plant and/or working on the distribution system, has performed routine tests, collected samples, completed operational reports, etc. It means that the knowledge possessed was, at least in part, gathered from daily operating experience, not merely from textbook study.

**“Advisory Council”** means Advisory Council for Certification of Public Water System Operators, as established by this regulation.

**“Base Level License”** means a water treatment and/or distribution license in which the following information is covered: general water system information; disinfection by hypochlorination; and distribution operation and maintenance for water supply systems having a flow of less than five hundred (500) gpm at twenty (20) psi.

**“Circuit Rider”** means a certified water operator who operates and/or is the direct-responsible-charge (DRC) for more than one (1) public water system.

**“Combined Treatment/Distribution System”** means any water supply system which is composed of a water treatment facility as defined in “Water Supplier” together with a water distribution system as defined in this section.

**“Continuing Education Unit (CEU)”** means a measure of professional, educational training, where one (1) CEU is equal to ten (10) hours of classroom and/or laboratory training.

**“Department”** means Delaware Health and Social Services.

**“Direct-Responsible-Charge (DRC)”** means certified water system operator(s) assigned ~~accountability for performance of active, on-site operational duties~~ active daily technical direction and supervision or active daily accountability for process control decisions of a facility or a major segment of a facility that directly impacts public health or the environment.

**“Director”** means Director of the Division of Public Health or his/her duly authorized designee.

**“Division”** means Division of Public Health.

**“Educational Contact Hour”** means the amount of time spent at a water operators or water distribution operators training course, after initial certification, not including travel time or lodging time. For purposes of these Regulations, the initial base certification course does not qualify as educational contact hours and one (1) hour of time spent in a training course is equal to one (1) educational contact hour.

**“Endorsement”** means any water treatment operation as listed in Section 5.2.1 which is over and above the base level license as defined in ~~“Base Level Service”~~ this section.

**“Operator”** ~~means a licensed person who works in a water treatment facility and/or a water distribution system who may be a DRC or may work under a DRC.~~ Means the individual who has responsibility for the operation of a water treatment plant or water distribution system and any individual who normally has charge of an operating shift, or who performs process control decisions including analytical control.

**“Person”** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, state commission, Advisory Council, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, or any other legal entity.

**“Process Control Decision”** means a decision that

maintains or changes the water quality or quantity of a water system in a manner that may affect the public health or the environment.

**"Public Water System"** means a water supply system for the provision to the public of water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes for consumption in more than three dwelling units, or furnishes water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings, including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, camps of all types, day and boarding schools, clubhouses, hospitals and other institutions, or offers any water for sale for potable or domestic purposes. Public water systems are classified as follows:

**"Community Water System (CWS)"** means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents;

**"Non-Transient Non-Community Water System (NTNCWS)"** means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year;

**"Non-Community Water System (NCWS)"** means a public water system which has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year;

**"Miscellaneous Public Water System (MPWS)"** means a public water system that is neither community, non-community nor non-transient non-community.

**"Secretary, Delaware Health and Social Services"** means the Administrator of the Department of Health and Social Services of the State of Delaware as defined in Title 29, Section (b), Delaware Code or his/her duly authorized designee.

**"Water Distribution System"** means that portion of the water supply system in which water is stored and conveyed from a water treatment plant, groundwater well, or other supply point to the free-flowing outlet of the ultimate consumer.

**"Water Supplier"** means any person who owns, operates, or manages a public water system.

**"Water Supply System"** means the work and auxiliaries for collection, treatment, storage, and distribution of water from the source of supply to the free-flowing outlet of the ultimate consumer.

**"Water Treatment"** means any process which is meant

to alter the physical, chemical or bacteriological quality of the water.

**"Water Treatment Facility"** means that portion of the water supply system which is meant to alter the physical, chemical, or bacteriological quality of the water being treated.

### **3.0 Advisory Council For Certification Of Public Water System Operators**

3.1 An Advisory Council for Certification of Public Water System Operators shall be appointed by the Secretary, Delaware Health and Social Services to advise and assist the Secretary in the administration of this regulation. The Advisory Council shall hold at least quarterly meetings each calendar year and such special meetings as it deems necessary.

#### 3.2 Membership:

3.2.1 The Advisory Council will consist of a minimum of nine (9) members and with the following representation:

3.2.1.1 one (1) member representing the Division of Public Health who shall serve as Advisory Council Secretary/Treasurer, responsible for maintaining all appropriate records and conducting the daily business of the Advisory Council.

3.2.1.2 three (3) members representing the general public

3.2.1.3 two (2) representatives from local government agencies with managerial responsibility for water treatment and/or water distribution in a public water system with the following representation:

3.2.1.3.1 one (1) member representing a local government agency having a population greater than or equal to 10,001 and;

3.2.1.3.2 one (1) member representing a local government agency having a population less than or equal to 10,000

3.2.1.4 one (1) member representing business or industry

3.2.1.5 one (1) member representing a public water utility.

3.2.1.6 one (1) member holding a valid water operator's license, or who is eligible to be licensed under this regulation.

3.2.2 Advisory Council members will serve a five (5) year term with the right to resign at their request or until such time as a re-appointment or a replacement appointment is made.

3.2.2.1 Initially one (1) member will be appointed for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, two (2) for a term of four (4) years and two (2) for a term of five (5) years.

3.2.2.2 The Division representative will serve an unlimited term at the discretion of the Secretary.

3.2.3 Advisory Council appointees shall represent all counties of the State, with at least one (1) member each from New Castle, Kent and Sussex Counties.

3.2.4 The Secretary may remove any member of the Advisory Council for misconduct, incapacity, or neglect of duty, and shall be the sole judge of the sufficiency of the case for removal.

3.2.5 The Secretary shall fill any vacancy. Such an interim appointment shall be for the duration of the term.

### 3.3 Responsibility and Authority:

3.3.1 The Advisory Council, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation. These procedures and guidelines shall include but not be limited to the following:

3.3.1.1 procedures for examination of candidates and the granting of licenses;

3.3.1.2 procedures for the renewal of licenses;

3.3.1.3 procedures for the suspension, revocation and failure to renew licenses;

3.3.1.4 guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;

3.3.1.5 guidelines for evaluating equivalency of other licensing and certification programs for the purpose of according reciprocal treatment.

3.3.1.6 procedures for the collection and disbursement of fees.

3.3.2 The Advisory Council shall possess the necessary authority as delegated by the Secretary to carry out all activities required for the proper administration of this regulation. Such authority includes:

3.3.2.1 the development of rules and regulations, to be adopted by the Secretary, concerning the licensing of operators of public water systems;

3.3.2.2 establishing the method of examination for each license applicant, including preparation, administration, and grading of examinations;

3.3.2.3 the recommendation to the Secretary regarding the issuance and renewal of licenses;

3.3.2.4 the recommendation of disciplinary sanctions to the Secretary on operators who violate Section 10 of this regulation.

## 4.0 License Requirements For Public Supply Water Systems

### 4.1 Water Supply Treatment Facilities

4.1.1 Two years following the effective date of this regulation, any public water supply system treatment facility must be under the direct-responsible-charge of a person possessing a valid base level water operator's license, defined in Section 2.0 of these regulations, and all applicable endorsements, if any, for the treatment facility to be

operated.

### 4.2 Water Supply Treatment Facility Operators

4.2.1 Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible-charge (DRC) and/or operate any public water supply system treatment facility unless said person possesses a valid base level water operator's license and applicable endorsements, if any, for the treatment facility to be operated.

### 4.3 Water Supply Distribution Systems

4.3.1 Two years following the effective date of this regulation, any public water distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

### 4.4 Water Supply Distribution System Operators

4.4.1 Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible charge (DRC) and/or operate any public water supply distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), unless said person possesses a valid base level water operator's license and, at a minimum, a distribution endorsement.

### 4.5 Combined Treatment/Distribution Supply Systems

4.5.1 The license requirements stipulated in 4.1 and 4.3 apply separately and equally to both the water supply treatment facility operator and the water supply distribution facility operator of a combined treatment/distribution supply system.

4.5.2 Any water supply treatment facility which is part of a combined public water treatment/distribution system must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and all applicable endorsements, as defined by the Division, if any, for the treatment facility to be operated.

4.5.3 Any water supply distribution system which is part of a combined public water treatment/distribution system and is capable of producing greater than five hundred (500) gpm at twenty (20) psi must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.5.4 The requirement of a distribution endorsement as stated in Section 4.5.3 may be waived if the owner can demonstrate to the Division that all distribution system operation and maintenance is contracted out to another licensed operator.

### 4.6 Notification to Division of Public Health

4.6.1 Within twenty-six (26) months of the effective date of this regulation, any owner of a public water supply system treatment facility, distribution system, or

combined treatment/distribution system must provide to the Division a list of all persons in direct-responsible-charge and all operators who have been duly licensed under these regulations. Further, the owner must notify the Division in writing of any additions, deletions, or other changes in the number of licensed direct-responsible-charges ~~or operators~~ within thirty (30) days of such change. The notification must include the name and license number of the new DRC.

#### 4.7 Temporary Variance

4.7.1 A temporary variance from the license requirements provided in Sections 4.1, 4.3 and 4.5 of this regulation may be granted by the Secretary, upon recommendation by the Advisory Council, to the owner of a public water system treatment facility, distribution system, or combined treatment/distribution system, when it is demonstrated to the satisfaction of the Advisory Council that the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such temporary variance may be issued with any special conditions or requirements deemed necessary to assure the protection of the public health.

4.7.2 Notification of the unexpected loss of a licensed operator must be sent to the Advisory Council by the owner within thirty (30) days pursuant to 4.6 of this regulation. Application for a temporary variance must be made to the Advisory Council on forms provided by the Advisory Council no later than thirty (30) days following such initial notification. After thorough review of the application and any other information required by the Advisory Council as being pertinent to the issuance of a temporary variance, the Advisory Council shall make a recommendation to the Secretary. The Secretary notifies the applicant in writing of his/her decision to approve or deny the temporary variance.

4.7.3 A temporary variance shall be valid only for that facility or system for which issued, and for a period of time as specified by the Secretary, but which shall not exceed six (6) months.

#### 4.7.4 Extension of Temporary Variance

4.7.4.1 When it is demonstrated to the satisfaction of the Secretary that the owner holding a temporary variance has continued to act in good faith in attempting to hire a licensed operator but is unable to do so, one (1) extension of the original variance may be granted at the discretion of the Secretary, upon recommendation by the Advisory Council, for a period of time not to exceed six (6) months. Requests for an extension of a temporary variance must be made to the Advisory Council in writing no later than one (1) month prior to the expiration date of the original variance.

### 5.0 Classification Of Public Water Systems

5.1 The Division of Public Health shall classify all public water systems in accordance with the criteria hereby

established.

#### 5.2 Water Supply Facilities

5.2.1 Public water system supply facilities shall be classified according to the treatment process(es) it operates. General treatment processes shall be grouped into categories hereby called endorsements. Within each endorsement shall be specific unit processes, hereby called endorsement sub-categories, see appendix A for a list of these endorsements and endorsement sub-categories. The Division will specify which endorsements and endorsement sub-categories a public water system needs based upon the most recent sanitary survey conducted by the Division. The list of endorsements is as follows:

5.2.1.1 Disinfection

5.2.1.2 Chemical Feed

5.2.1.3 Filtration

5.2.1.4 Surface Water Operations

5.2.1.5 Other Specified Treatment

5.2.1.6 Distribution

5.2.2 The Advisory Council shall amend Appendix A as is necessitated by the creation of new treatment technologies.

5.2.3 In the event of an emergency, such as source water contamination, in which a treatment process is required to protect the public's immediate health and which the DRC and/or operator is currently not licensed for, an emergency endorsement may be added to the DRC's and/or operator's license provided that prior approval, by the Division, is granted. This emergency endorsement shall be issued for a period not to exceed one (1) year, without the express written consent of the Secretary. The operator must pass the appropriate endorsement test within the one-year period of the emergency endorsement.

### 6.0 License Classification And Operator Qualifications

#### 6.1 License Classification

6.1.1 One (1) regular water supply operator license class is hereby established:

6.1.1.1 Base Level Water Supply Operator with all applicable endorsements as stated in Section 5.2.1.

6.1.2 ~~Three (3)~~ Two (2) specialty class licenses are also established:

6.1.2.1 Water Supply Operator-in-Training (OIT)

~~6.1.2.2 Circuit Rider~~

6.1.2.3 2 Grandfather Clause

#### 6.2 Operator Qualifications

6.2.1 Base Level Water Supply Operator

6.2.1.1 High School Diploma or equivalent and one (1) year of acceptable operating experience, or;

6.2.1.2 Three (3) years of acceptable operating experience, and;

6.2.1.3 Successful completion of the base level written examination;

## 6.2.2 Water Treatment Operator-In-Training (OIT)

An operator who lacks either the education or experience requirements for a base level license may, with the approval of the Secretary, upon recommendation by the Advisory Council, and after successful completion of the base level written examination, receive an interim Operator-in-Training (OIT) license, for a maximum of three (3) years, pending fulfillment of the regular license requirements.

6.2.3 ~~Circuit Rider. To be classified~~ qualify as a circuit rider, an operator must be able to meet the following criteria:

6.2.3.1 Must be certified for all endorsements required for the water systems for which he/she is in direct-responsible-charge and/or operates.

6.2.3.2 ~~Spend a recommended number of~~ Shall make at least three (3) visits each week at each water system that provides any treatment and shall make at least one (1) visit each week for each system that has no treatment he/she is in direct-responsible-charge. This number may be adjusted by the Advisory Council based upon a ~~yearly review~~ written request from the operator and/or owner of the water system with justification provided for making the change.

6.2.3.2.1 ~~The number of visits spent each week at each water system must be documented on forms, provided approved by the Division, and submitted upon request. Information that must be contained includes; name of water system, name of operator, date of visit, time of visit, activities performed (i.e., filled chlorine tank, adjusted feed rate, etc.)~~

6.2.3.2.2 For the purposes of this section, a DRC circuit rider must be available in the event of an emergency, but does not have to be on-site.

6.2.3.3 The distances between each water system shall be such that, in the event of an emergency, the circuit rider will be able to reach the water system within two (2) hours of first being notified of the emergency.

6.2.4 Grandfather Clause: A valid, base level license and any applicable endorsements shall be issued by the Secretary, upon recommendation by the Advisory Council, to the individual(s) certified by the governing body or owner of a public water system to have been in responsible charge and/or operated a water facility on the effective date of this regulation, under the following criteria:

6.2.4.1 .the individual(s) can provide documentation to the Advisory Council attesting to the fact they have been in a position of Direct-Responsible-Charge and/or operated a water facility for at least five (5) years prior to the adoption date of these Regulations-, and

6.2.4.2 any application for a license pursuant to this section must be submitted on or before July 1, 2001.

6.2.5 A license and endorsement(s) granted under Section 6.2.4 of these Regulations shall not be transferable to another water system.

6.2.6 Acceptable Experience Requirement: An applicant for any endorsements or sub-endorsements must have at least one year of acceptable experience with the treatment process or distribution system in order to receive the endorsement on his/her license. Applicants that take and pass the endorsement test may receive an Operator in Training license for up to one year in order to obtain the necessary experience.

## 7.0 Licensing Procedures

### 7.1 Examinations

7.1.1 The Advisory Council or its authorized designee may enter into a contract with third party to prepare, administer and grade written examinations required for each category and classification of license. A minimum score of seventy percent (70 %) shall be required to pass the examination. Examinations are confidential and remain the property of the Advisory Council. Due to unusual and extenuating circumstances, the Advisory Council may waive the requirements for the written examination, in which case an oral recorded examination shall be conducted and retained by the Advisory Council.

#### 7.1.2 Schedule

7.1.2.1 Examinations shall be held at places and times designated by the Advisory Council, and shall be held at least semiannually. Advance public announcement shall be made by the Advisory Council at least two (2) months prior to the scheduled examination date.

#### 7.1.3 Applications

7.1.3.1 Candidates wishing to take any license examination must submit an application to the Advisory Council at least thirty (30) days prior to the announced date of the examination on forms provided by the Advisory Council. No application form shall require a picture of the applicant, require information relating to citizenship, place of birth, or length of State residency, nor shall it require personal references

#### 7.1.4 Application Review and Notification

7.1.4.1 The Advisory Council shall review all applications submitted and determine the eligibility of each candidate to sit for the particular examination applied for. Each candidate approved for examination shall be notified in writing by the Advisory Council of the time and place of the next examination for which the candidate is eligible. Such notification shall be given at least two (2) weeks prior to the examination date.

#### 7.1.5 Fraudulent Applications

7.1.5.1 Where the Council has found to its satisfaction that an application has been fraudulent, or that false information has been intentionally supplied, it shall report its finding to the Attorney General for further action.

#### 7.1.6 Eligibility

7.1.6.1 Approved applications for examination shall remain valid for one (1) year. Any

approved candidate who fails to appear for an examination during the one (1) year period following the first notification of eligibility must submit a new application for examination to the Advisory Council.

7.1.6.2 Any applicant that fails to submit payment for their license within ninety (90) days of the first notification they passed the examination and are eligible for licensure must submit a new application to the Advisory Council and retake the exam.

7.1.7 Appeal of Rejected Applications and Failed Examinations

7.1.7.1 Where the application of a person has been refused or rejected, the applicant may appeal in writing, via certified mail, to the Secretary within thirty (30) days. Any applicant who failed the examination has the right to appeal before the Advisory Council.

7.1.8 Re-Examination

7.1.8.1 Any candidate who fails to pass an examination may apply for re-examination upon subsequent scheduled examination dates. Candidates are permitted to sit for the same examination two (2) times per year. If both examinations are failed, the candidate must wait one (1) year prior to re-examination.

7.2 Issuance of License

7.2.1 On satisfactory fulfillment of the requirements provided in this regulation, and providing proof of employment at a Delaware water system, the candidate shall be issued a suitable license by the ~~Secretary~~ Director, upon recommendation by the Advisory Council. The license shall indicate all endorsements for which the operator is qualified, ~~and~~ the date of issuance and date of expiration.

7.3 Renewal of License

7.3.1 Licenses shall be renewed every two (2) years unless suspended, revoked for cause, or invalidated under 7.4. The deadline renewal date shall be the month and day of the original license issuance. Application for renewal must be submitted to the Advisory Council on forms provided by the Advisory Council at least sixty (60) days prior to the deadline renewal date.

7.3.2 In addition to Section 7.3.1, all operators, including grandfathered operators, must receive an additional amount of training, as approved by the Advisory Council, every two (2) years in order to renew their licenses, as shown below.

7.3.2.1 Twenty (20) educational contact hours every two (2) years for operators who have endorsements on their licenses.

7.3.2.2 Twelve (12) educational contact hours every two (2) years for operators with a base level license.

7.3.3 Any license that has not been renewed in accordance with 7.301 and 7.302 shall be automatically invalidated. Such expired license may be revalidated without examination upon payment of the appropriate fee and

verification of completion of continuing education requirements within one (1) year from the expiration date. Licenses not reinstated within one (1) year shall submit a new application to the Advisory Council and may be required to sit for the appropriate written examination.

Note: Continuing education credits may be earned during the period of invalidation if the applicant is short of the required number. However, these credits will not carry over to the two-year term of the renewed license.

7.4 Denial of Renewal, Suspension, or Revocation of Licenses and Placement on Probation

7.4.1 The Secretary may suspend or revoke the license of an operator, after considering the recommendations of the Advisory Council, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. Said recommendations to the Secretary by the Advisory Council shall be made upon the Advisory Council conducting a hearing in accordance with provisions established under these regulations. Examples of actions which may result in denial of renewal, suspension or revocation of a license or placement on probation include, but are not limited to; failure to notify the Division of chemical overfeeds and other emergencies, failure to respond to an emergency, etc.

7.5 Fees

7.5.1 The fee schedule as authorized by 16 **Del.C.** 122(3)(c) and set forth below shall take effect on the effective date of this regulation.

7.5.1.1 ~~Application for~~ Initial Annual License \$50.00. Biennial License \$100

7.5.1.2 ~~Application for~~ Renewal of Annual License \$50.00. Biennial License \$100

7.5.2 All ~~application~~ fees are payable upon application notification by the Division that an applicant has been approved for licensure.

7.6 Reciprocity

7.6.1 A license of comparable classification may be issued without examination to any person who holds a certificate or license in any state, territory, or possession of the United States or any country, if in the judgment of the Secretary, the requirements under which the certification or license was issued do not conflict with the provisions of this regulation or any rules promulgated hereunder, and are of a standard not lower than that specified by this regulation.

## **8.0 Preemption**

The provisions of these regulations preempt existing regulations of this State insofar as they relate to or conflict with the provisions of this regulation.

## 9.0 Severability

Each Section of this regulation and every part of each Section is an independent Section and part of a Section, and the holding of any Section or part thereof to be unconstitutional, void, or invalid for any cause does not affect the validity or constitutionality of any other Section or part thereof which shall continue valid and effective.

## 10.0 Disciplinary Procedures

10.1 Grounds for Discipline. The conditions and actions of an applicant or licensed operator which may result in disciplinary action as set forth in 10.3 of this Section includes, but is not limited to, the following list. If after following the Disciplinary Procedures as stated in Section 10.2, the Council finds that, after conducting an investigation and hearing an applicant or licensed operator:

10.1.1 Has acted fraudulently or with material deception in order to be certified; or

10.1.2 Has engaged in illegal, incompetent or negligent conduct in the provision of water system operation; or

10.1.3 Has as an operator or otherwise, in the practice of his or her profession, engaged in an act of consumer fraud or deception, or engaged in the restraint of competition, or participated in price-fixing activities; or

10.1.4 Has violated a lawful provision of this Section or any lawful rule or regulation established here under.

### 10.2 Disciplinary Procedures

10.2.1 Notice of Violation: Whenever the Director has reason to believe that a violation of any of these Regulations has occurred or is occurring, the Director shall notify the alleged violator and the Secretary. Such notice shall be in writing, may be sent by Certified Mail, or hand delivered, shall cite the Regulation or Regulations that are allegedly being violated, and shall state the facts which form the basis for believing that the violation has occurred or is occurring.

10.2.2 Investigation: Whenever the Director issues a Notice of Violation, an investigation shall be conducted to determine if the alleged violations have occurred or are occurring. ~~One~~ Two members of the Advisory Council shall act as the investigator and shall report the findings of the investigation to the Advisory Council. Upon review of all the facts concerning the alleged violation(s), the Advisory Council will vote on recommended disciplinary sanction(s), as listed in Section 3.0. The investigative member of the Advisory Council will not vote on the recommended disciplinary actions. The Advisory Council shall report to the Secretary and the Director with the findings of fact and recommendations for disciplinary action.

10.2.3 Hearing Request: Any operator who has received a Notice of Violation may submit a request for a

hearing to the Director within 30 days via certified mail. A hearing will be held within 180 days.

10.3 Disciplinary Sanctions. Persons regulated under this Section who have been determined to be in violation of this Section may be subject to the following disciplinary actions:

10.3.1 Issuance of a letter of reprimand

10.3.2 Placement on probationary status

10.3.3 Imposition of a fine not to exceed \$1,000 for each offense

10.3.4 Suspension of License

10.3.5 Revocation of License

10.4 Renewal of License after Revocation: An operator that has had his/her license revoked by the Secretary and wishes to get their license back must submit a new application to the Advisory Council for consideration. The application shall not be submitted for at least one year after the date of revocation.

## 11.0 Penalty Clause

11.1 Any person who neglects or fails to comply with this regulation shall be subject to penalty as provided in ~~16 Del.C.1071~~ 22(3)(c).

## APPENDIX A

Listed below are the general endorsement categories. Under each general category is a list of the endorsement sub-categories (unit processes) associated with each general category.

### A. Disinfection

1. Hypochlorination (Calcium or Sodium), powder or liquid
2. Gas Chlorination
3. Ozonation
4. Bromination
5. Iodine
6. Chloramines
7. Chlorine Dioxide
8. Ultraviolet Light

### B. Chemical Feed

1. Lime - Soda Ash Addition
2. pH Adjustment
3. Inhibitor - bimetallic phosphate, hexametaphosphate, orthophosphate, polyphosphate
4. Sequestering
5. Permanganate
6. Peroxide
7. Fluoridation

### C. Filtration

1. Activated Carbon, powder or granulated
2. Sand - Pressure, Rapid, Slow
3. Reverse Osmosis

4. Greensand
  5. Activated Alumina
  6. Ion Exchange
  7. Cartridge
  8. ~~Diamaceous~~ Diatomaceous Earth
  9. Ultrafiltration
  10. Microfiltration
- D. Surface Water Operations
1. Algae Control
  2. Coagulation
  3. Flocculation
  4. Rapid Mix
  5. Sedimentation
  6. Sludge Treatment
- E. Other Specified Treatment
1. Aeration - Cascade, Diffused, Packed Tower, Slat Tray or Spray
  2. Dechlorination - using reducing agents, sodium bisulfate, sodium sulfide, or sulfur dioxide
  3. Distillation
  4. Bone Char
  5. Electrodialysis
- F. Distribution
1. Flow less than 500 gpm at 20 psi
  2. Flow greater than 500 gpm at 20 psi

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## DEPARTMENT OF INSURANCE

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

### PUBLIC NOTICE

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Tuesday, August 3, 2004, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 606, PROOF OF AUTOMOBILE INSURANCE.

The purpose for amending Regulation 606 is to provide additional consumer protection by updating the requirements for motor vehicle insurance identification cards and to provide electronically accessible database(s) to establish proof of current automobile insurance to law enforcement officials and motorists at the scene of any accident or violation. Additionally, the amendments seek to update the format required for insurance identification cards that are required to be in each vehicle registered under Delaware law.

The hearing will be conducted in accordance with 19 Del.C. §311 and the Delaware Administrative Procedures

Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday August 2, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

### 606 Proof of Automobile Insurance [Formerly Regulation 31]

#### 1.0 Authority and Background

1.1 This regulation is adopted under the authority of 18 Del.C. §§~~311~~311 and 2304; 21 Del.C. §2118 ~~as amended by S. B. 212~~, and adopted in cooperation with the Department of Transportation, Division of Motor Vehicles ("DMV"). This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 Del.C., Ch.101. In support of the Delaware Motorist Protection Act (No-Fault Law) the Department of Insurance, in coordination with the DMV, has been authorized to adopt regulations to remove uninsured drivers from Delaware roads. This regulation is promulgated to carry out that directive.

#### 2.0 Background

~~2.1 In support of the Delaware Motorist Protection Act (No-Fault Law) the Department of Insurance, in coordination with the Division of Motor Vehicles, has been authorized to adopt regulations to remove uninsured drivers from Delaware roads. This regulation is promulgated to carry out the Legislature's direction.~~

#### 3.2.0 Purpose

~~3.2.1~~ 3.1 The purpose of this regulation is to define for insurers ~~which write~~ writing auto insurance policies in Delaware the requirements to issue a standardized insurance identification (ID) card for each insured vehicle, to establish the requirement for notification to the ~~Division of Motor Vehicles~~DMV under certain prescribed conditions when auto insurance coverage is terminated or when insurers pay claims for uninsured motorists and to provide for the submission of computer data to the ~~Division of Motor Vehicles~~DMV for administrative efficiency.

#### 4.3.0 Insurance Identification Card

~~4.3.1~~ 4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards for and to each insured vehicle registered in the State of Delaware. At least one card must be issued for each vehicle for which liability insurance is in effect. 21 Del.C. §2118 ~~(n)~~(o).

~~4.3.2 Insurers may use uniform ACORD format or may prepare the ACORD format as described below. The format for the Delaware Insurance Identification Cards shall be as follows:~~

~~4.3.2.1 The size, weight, and color of the card shall be as below:~~

~~4.3.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3.75" x 5.5"~~

~~4.3.2.1.2 Weight: Optional~~

~~4.3.2.1.3 Color: ~~White~~Optional~~

~~4.3.2.1.4 After September 1, 1993, each card shall be printed on ~~paper stock~~ plastic which contains a clearly visible watermark, screened color, reflective ink, or laser-lock or hologram, printed graphics with protective over laminate coating, (gloss or satin finish), which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, Delaware State Seal, or a generic insurance-specific logo which clearly identifies the watermark as issued by an insurance company.~~

~~4.3.2.2 The insurance card shall contain the following information:~~

~~4.3.2.2.1 The statement "The This ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may shall appear on the back of the card.~~

~~4.3.2.2.2 The Card shall be identified as "Insurance Identification Card."~~

~~4.3.2.2.3 The insurer's Company Name. The insurer's name shall be shown displayed. A Group name may be shown instead if provided the card will identify clearly identifies the specific company involved actual name of the issuing insurer.~~

~~4.3.2.2.4 Insurer's five-digit National Association of Insurance Commissioners ("NAIC") company identification number.~~

~~4.3.2.2.5 The Named Insured.—This which name must be the named insured same as carried in the insurer's records.~~

~~4.3.2.2.6 The Insured's Address.—is Optional.~~

~~4.3.2.2.7 Policy Number.~~

~~4.3.2.2.8 Effective Date.~~

~~4.3.2.2.9 Expiration Date. The expiration date for ID cards shall be no more than six months from the effective date, except that any insured who has not been continuously insured by a licensed insurance company or a qualified self-insured during the six months preceding the effective date of an ID card under this regulation shall be issued an ID card with an expiration date no longer than the date for which premium has been paid or for six months whichever is shorter. Notwithstanding the above, any insured owning five or more vehicles as part of a fleet or under a fleet policy may be issued an ID card which is effective for a six month period. The expiration date shall be stated by day,~~

month and year or month, day and year, as long as the exact date of expiration can be clearly identified. For purposes of this section, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six months.

~~4.3.2.2.10 Vehicle(s) Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:~~

~~4.3.2.2.10.1 Year, Make, Model and Vehicle Identification Number ("VIN") of the vehicle(s) insured. Model of the vehicle may not be shown as the Make. The Year, and Make of the vehicle may be abbreviated, but the complete VIN must be shown.~~

~~4.3.2.2.10.2 "All Owned Vehicles" (five vehicles or more); or~~

~~4.3.2.2.10.3 "Fleet" (five vehicles or more).~~

~~4.3.2.2.11 Items which are not obvious as to meaning shall be appropriately captioned. Two Dimensional Bar Code in compliance with PDF417 specifications reference in AAMVA (American Association of Motor Vehicle Administrators) DL/ID-2000 document, as modified by the Delaware Department of Motor Vehicles, which contains self-check digit and encryption, locks, and available to every insurer licensed to provide P&C insurance in the State of Delaware. The insurer may, at its option, add the "InsureNet Unique Code" on the card.~~

~~4.3.2.2.12 Items, which are not obvious as to meaning, shall be appropriately captioned.~~

~~4.3.2.3 The order of the information to be contained on the ID card may be rearranged at the option of the company; provided that all of the information required by section 3.2 is contained thereon there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.~~

~~4.3.2.4 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.~~

~~4.3.2.5 If a vehicle is specifically described on the an ID card, a new ID card shall be issued the company must issue a new card upon either a change of vehicle, or the acquisition of any additional one vehicle, or the assigning of. If a different policy number is assigned upon a policy renewal, a new ID Card must also be issued. The expiration date requirement of section 3.2.2.9 above shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an insurance I.D. card to the insured for the additional or replacement vehicle.~~

~~4.3.2.6 A letter or notification should accompany~~

every ID card advising the insured that the card is required to register the vehicle, obtain new ~~tags-registration plates~~, have his vehicle inspected, and serve as evidence of insurance for the law enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID CARD. Delaware law requires the ID card to be in the vehicle when it is being operated.

4.3.2.7 ~~The Division of Motor Vehicles~~DMV will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

4.3.2.8 Insurance ID cards shall be issued in conformance with ~~section 4.2.2~~ Section 4 of this Regulation above. The Insurance Commissioner may exercise his/ her statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

4.3.2.8.1 For each ~~occasion~~ instance where the Insurance Commissioner determines that an ID card was not issued inadvertently in non-compliance with section 4.2.2.9 above in compliance with Section 4.2.2.9, the insurer shall be subject to a penalty of \$100, ~~the insurer shall be fined \$100~~. No ~~fine, however, penalty~~ shall be imposed if the ID card was validly issued.

4.3.2.8.2 For each ~~occasion~~ instance where the Insurance Commissioner determines that an ID card was intentionally issued with disregard of the requirements of Section 4 B.2(i) (4.2.2.9) above in violation of Section 4.2.2.9, but with no pattern of conscious disregard, the insurer shall be subject to a penalty of fined \$1,000.

4.2.8.3 ~~For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section 4.2.2.9 above, the insurer shall be fined \$2,000.~~

4.3.2.9 "Date of issuance" of an insurance card shall be the effective date of that card.

Amended Section 4 became effective May 12, 1993.

#### **5.4.0 Notice of Cancellation or Termination**

5.4.1 Whenever an assigned risk insurance policy is cancelled or terminated for any reason within two years of the original date of issuance, the company must file a written Notice of Cancellation with the ~~Division of Motor~~

~~Vehicles~~DMV within 30 days following the effective date on which cancellation becomes final. "Final" means the date after which coverage cannot be reinstated without lapse.

5.4.2 ~~The notice shall be filed with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become final. "Final" means the date after which coverage cannot be reinstated without lapse. In lieu of written as required by section 4.1, the notice can be filed electronically with the DMV using the Delaware Insurance Information System software system, this to be accomplished within 24 hours except on weekends, holidays, during periods of computer failure or during times of emergency.~~

5.4.3 The written notice shall be a two-part form with the size, content, and format consistent with the attached forms and specifications as approved by the ~~Division of Motor Vehicles~~ DMV. (See Attachment A—Specifications for Delaware Notice of Termination, Form FR-4.) The location of the window area for the insured's name and address is prescribed so ~~Division of Motor Vehicles~~DMV can use the same window envelope for mailing notices from all companies. The ~~Division of Motor Vehicles~~DMV will use the same notice for forwarding mailing notices to the terminated policyholder. If the notice is submitted electronically through the Delaware Insurance Information System in lieu of a written notice, the company will not be required to provide a mailing envelope or two-part form to the DMV.

#### **6.5.0 Compliance Date--Use of Old and New Forms**

6.5.1 Upon the next renewal date 90 days after the effective date of this regulation, insurers shall issue the new insurance card as described in Section 3 to their Delaware policyholders for renewals, replacement vehicles, re-in statements, and new vehicles.

6.5.1.1 Companies may exhaust their present supply of ID cards by adding the ~~NAIC Code Number~~ "InsureNet Unique Code", and a Two Dimensional Bar Code containing the information detailed in Sections 4.2.2.3 through 4.2.2.10.1. This temporary alternative may take the form of a stamped or pasted label affixed to the current supply of ID cards. However, the new ID card which complies with the regulation shall be mailed to all Delaware policyholders by no later than October 1, 1990, regardless of whether a prior ID card indicating a later date of expiration has been issued and at least every six months thereafter. (New ID cards shall be issued for replacement vehicles.) In addition, use of the notice of cancellation shall begin no later than October 1, 1990.

6.5.2 Companies are responsible for providing all forms required under this Regulation.

Amended Section 6 became effective January 1, 1991.

## **7-6.0 Furnishing Motor Vehicle Liability Insurance Information to the ~~Division of Motor Vehicles~~DMV**

7-6.1 An All insurer shall furnish within 30 days of a request by the ~~Division of Motor Vehicles~~DMV prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided on computer tape(s) as prescribed in Attachment B.

7-6.1.1 In lieu of compliance with section 7.1, an insurer may furnish, within 24 hours, except on weekends, holidays, during periods of computer failure or during times of emergency, through the Delaware Insurance Information System, the prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided electronically via x.12, x25, FTP, or other method to be the choice of the insurer, except that information shall be sent using the automatic interface of the Delaware Insurance Information System software provided, so as to ensure security of data and compliance with this Regulation.

7-6.1.2 The following data fields will be required for new policies issued by the Insurance Company: Vehicle Identification Number, Vehicle Make, Vehicle Model, Vehicle Year, Policy Number, State Code, NAIC Code, Policy Issued Date and Time, Policy Effective Date and Time, Expiration Date, Assigned Risk Code if applicable, InsureNet Unique Code, Insured's Last Name, Insured's First Name and Insured's Address. The following fields are optional, Agent Code, Agent Telephone Number and Customer Service Representative Code.

7-6.1.4 The following data fields will be required for all reinstatements issued by the Insurance Company: InsureNet Unique Code, Vehicle Identification Number, policy number, a value to recognize that it is a reinstatement, reinstatement issue date and time and the effective date and time and Expiration Date.

7-6.1.3 The following data fields will be required for all cancellations or terminations issued by the Insurance Company: InsureNet Unique Code, Vehicle Identification Number, policy number, a value to recognize that it is a termination/ cancellation, Cancellation Issue Date and Time, and the Effective Date and Time.

7-6.2 Those insurers unable to provide the prescribed information by computer tape must obtain written approval from the ~~Division of Motor Vehicles~~ DMV to provide the information in a prescribed paper listing. This approval must be obtained ~~by January 1, 1991~~ within 90 days of the effective date of this Regulation or within 90 days of an insurer entering the Delaware market. (See Attachment C.)

## **8-7.0 Random Selection/Verification**

8-7.1 Pursuant to ~~State Statute~~, 21 Del.C. §2118 the ~~Division of Motor Vehicles~~ DMV shall, ~~periodically~~ randomly select on an annual basis randomly select at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance at

intervals specified in section 8.4 below. This process shall be accomplished ~~by computer tapes~~ electronically except where approved under section 7.2 of this regulation. The prescribed information and format of the data being furnished by the ~~Division of Motor Vehicles~~ DMV to the insurers shall be as prescribed in Attachment D. Responses from the insurers shall be required only for those vehicles determined by the insurers to be ~~not insured~~ uninsured.

8-7.2 The prescribed information and format of data furnished to those nonautomated insurers as approved in section 7.2. shall be prescribed in Attachment E. Responses from the insurers who are non-automated shall be required only for those vehicles as determined by the insurer to be ~~not insured~~ uninsured.

8-7.3 All responses from the insurers shall be delivered to the ~~Delaware Division of Motor Vehicles~~ DMV within 30 days of the mailing or transmission date of the verification request. All responses shall include a completed prescribed transmittal letter to indicate the completion of the specified verification project.

8-7.4 The random selection/verification process shall be done no more than twelve times and no less than four times annually.

## **9-8.0 Notification of Uninsured Drivers**

9-8.1 Each insurer licensed to write automobile liability insurance in Delaware shall notify the ~~Division of Motor Vehicles~~ DMV on a form approved by the ~~Division of Motor Vehicles~~ DMV (Attachment F), the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

## **10-9.0 Additional Required Proofs of Insurance**

10-9.1 Each insurer licensed to write automobile liability insurance in this State shall, at the request of the DMV, ~~furnish to their insureds~~ verification of the insurance in force at the request of the Division of Motor Vehicles to their policyholders. The forms provided by the insurers to their agents or to the policyholders directly shall conform ~~with~~ to the format of Form FR-19 (Attachment G). Each insurer is responsible for safeguarding the issuance of these forms to qualified insured drivers only. Forms shall be controlled, and numbered sequentially, by the insurer or its agents. To prevent copying, the sequential numbers must be in red ink and a minimum of seven digits. The words "Delaware Insurance Certificate" must be in dark blue ink.

## **11-10.0 Enforcement**

11-10.1 Failure of an insurer to provide an Insurance Identification Card, or to provide notice of cancellation or termination as provided in Section 4.0, shall be deemed a

violation under the applicable provisions of Titles 18 and/or 21 of the Delaware Code of the Commissioner's lawful order and may be found in violation of The Motor Vehicle Code, Title 21. Upon a finding that a violation has occurred, an insurer will be subject to such penalties as allowed in such instances the insurer shall, after hearing, be subjected to the penalties as prescribed in 18 Del.C. §334 §329 or its successor.

**12:11.0 Severability Separability**

12:11.1 If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

**13:12.0 Effective Date**

13:12.1 Except for the conditions specified under Section 6.0 this regulation\* shall become effective on January 1, ~~1994~~ 2005.

13:12.2 Delaware Insurance Department Bulletins 71-21, 71-22 and 74-8 are superseded and are rescinded effective January 1, 1991.

\*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation.

Attachments A to G accompanying Regulation No. ~~34~~ 606 follow:

ASSIGNED RISK  
INSURANCE CERTIFICATION REQUEST  
INITIAL TAP PROCESSING  
LETTER OF TRANSMITTAL  
RANDOM SELECTION TAPE PROCESSING  
DELAWARE UNINSURED VEHICLE REPORT  
RANDOM SELECTION MANUAL PROCESSING  
DELAWARE INSURANCE CERTIFICATION

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 311 (18 Del.C. §311)

**NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday, August 4, 2004, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 607 relating to Defensive Driving Course Discount Automobiles and Motorcycles.

The purpose for amending Regulation 607 is to update the regulation and to provide for online as well as classroom courses and instruction. As a result there will be some definitional changes to the regulation as well as other changes reflective of recent technological developments.

The hearing will be conducted in accordance with 19 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday August 2, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

**607 Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]****1.0 Purpose and Authority**

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Sponsors and Instructors. This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.

2 DE Reg 989 (12/1/98)

**2.0 Authority**

~~This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.~~

2 DE Reg 989 (12/1/98)

## 2.0 Definitions

2.1 “Classroom courses”— for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.

2.2 “Committee”— for the purpose of this regulation means the Defensive Driving Credentials Committee.

2.3 “Department”— means the Delaware Insurance Department.

2.4 “On-line courses”— for the purpose of this regulation means instruction provided through the use of a computer including the use of CD roms or websites.

2.5 “Providers” – Corporate sponsor for any course as well as the individual who signs the application for the course.

## 3.0 Minimum Requirements

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

3.1 The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

3.2 The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the Insurance Commissioner.

**2 DE Reg 989 (12/1/98)**

## 4.0 Application

4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

4.2 An insured who has received a defensive driving discount as outlined in section 4.1 above may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or within two years thereof to receive a 15% discount for an additional three year period as outlined in section 4.1 above.

Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

**2 DE Reg 989 (12/1/98)**

## 5.0 Implementation

5.1 In the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.

5.2 The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

## 6.0 Defensive Driving Course Credential Committee

6.1 The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). In appointing Committee members, the Commissioner shall consider the following characteristics:

6.1.1 knowledge of principles of teaching and learning;

6.1.2 knowledge of safe driving principles;

6.1.3 knowledge of Delaware Motor Vehicle laws; and

6.1.4 To recommend approval of a course or applicant, the Committee shall require the course contains the following: any other relevant characteristics or experience.

6.2 The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course sponsor and who meet the standards set forth in sections 10.1.1 through 10.1.4.

6.3 Duties. The Committee shall:

6.3.1 ~~Choose~~ Elect its ~~Chairman~~ Chairperson and shall make recommendations to the Commissioner concerning the duties set forth herein;

6.3.2 Review and examine defensive driving course sponsors, instructors and prospective sponsors and instructors to its satisfaction.. Recommend certification, denial of certification or de-certification of a course sponsor or prospective sponsors and applicants.

6.3.3 Review and examine defensive driving courses and shall further monitor courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements.

6.3.4 Certify approved course sponsors and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and

6.3.5 Conduct any other such activity reasonably related to the furtherance of its duties.

**2 DE Reg 989 (12/1/98)**

**7.0 Certification Criteria for Defensive Driving Programs and Sponsors**

Each course sponsor shall:

7.1 Submit for approval written course description for any defensive driving course to be offered that minimally includes the following elements:

7.1.1 The definition of defensive driving and the collision prevention formula serving as the basis for the course;

7.1.2 Vehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;

7.1.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

7.1.4 A discussion of the five factors affecting driving, ~~being: the condition of the driver, the vehicle, the road, weather and lighting~~ as and how they pertain to driving defensively; including, but not limited to:

7.1.4.1 The condition of the driver, the vehicle, the road, sun glare, weather and lighting;

7.1.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, talking with a passenger, reading and eating;

7.1.5 A discussion of specific driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

7.1.6 Consideration of the hazards and techniques of city, highway, expressway and rural driving, including but not limited to proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

7.2 Require its instructors to present courses in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

7.3 Require that each student receives a minimum of six hours of class time for the initial course and three hours of class time for the refresher advanced (renewal) course. Each hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course

curriculum.

7.4 Require its instructors to be in the classroom with the students during any and all periods of instructional time.

7.5 Require instructors to maintain an atmosphere appropriate for class-work.

7.6 Supply students who complete a defensive driving course with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsor's authorized signature.

7.7 Require that each of its instructors request his or her students complete a standardized Course/Instructor Evaluation Form for not less than one-third of the courses provided by each instructor and retain completed evaluation forms until the expiration of the certification period during which they are completed. The Course/Instructor Evaluation Form shall be in the manner and form prescribed by the Committee.

7.8 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

**2 DE Reg 989 (12/1/98)**

**8.0 De-certification, Suspension And Probationary Status**

8.1 Course sponsors and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.

8.2 Prior to de-certification, placement on probation or suspension of certification, the course sponsor/instructor shall be notified, in writing, by the Committee. The course sponsor/instructor shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.

8.3 A course sponsor/instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.

8.4 A course sponsor/instructor may be de-certified, suspended or placed on probation for the following:

8.4.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;

8.4.2 Falsification of, or failure to keep and provide adequate student records and information as required herein;

8.4.3 Falsification of, or failure to keep and provide adequate financial records and documents as required; and

8.4.4 Failure to comply with any other standard

set forth in this Regulation.

**2 DE Reg 989 (12/1/98)**

### 9.0 Appeal Procedures

9.1 Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course sponsor/instructor may file an appeal requesting review of the action taken.

9.2 The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

9.3 The Committee shall conduct all hearings pursuant to 29 **Del.C.**, Ch.101 of the Delaware Code Annotated.

**2 DE Reg 989 (12/1/98)**

### 10.0 Certification Process for Defensive Driving Instructors

10.1 Basic Requirements. Each instructor shall:

10.1.1 Be at least 18 years of age;

10.1.2 Be a high school graduate or have a G.E.D.;

10.1.3 Hold a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and

10.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to require a criminal history background check of all applicants for an instructor's certification.

10.2 The Committee may recommend that Basic Requirements sections 10.1.2 through 10.1.4 hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.

10.3 Re-certification. Every two years each instructor shall:

10.3.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

10.3.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

10.3.3 Submit a form as prescribed by the Committee certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation.

10.3.4 The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. The Committee shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.

**2 DE Reg 989 (12/1/98)**

### 11.0 Effective date.

11.1 This act shall become effective on January 1 of 1999.

**2 DE Reg 989 (12/1/98)**

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Section 311 (18 **Del.C.** §311)

### NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Tuesday, August 3, 2004, at 9:30 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 1501 relating to MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS.

The purpose for amending Regulation 1501 is to provide protection to a beneficiary covered under a spouse's employer's plan that is primary to Medicare when the primary coverage ends through no fault of the beneficiary. This change will guarantee the ability of an individual to obtain a health policy that will supplement the costs of Medicare. The change will be made by amending 12.2.1 of the regulation (the underlined section constituting the amendment): "12.2.1The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan."

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday August 2, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

### 12.0 Guaranteed Issue for Eligible Persons

12.1 Guaranteed Issue

12.1.1 Eligible persons are those individuals

described in section 12.2, who seek to enroll under the policy during the period specified in section 12.3, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

12.1.2 With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in section 12.5 that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

12.2 An eligible person is an individual described in any of the following paragraphs:

12.2.1 The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan.

12.2.2 The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:

12.2.2.1 The certification of the organization or plan under this part has been terminated; or

12.2.2.2 The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

12.2.2.3 The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

12.2.2.4 The individual demonstrates, in accordance with guidelines established by the Secretary, that

12.2.2.4.1 The organization offering the plan substantially violated a material provision of the

organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

12.2.2.4.2 The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

12.2.2.5 The individual meets such other exceptional conditions as the Secretary may provide.

12.2.3 The individual is enrolled with:

12.2.3.1 An eligible organization under a contract under section 1876 of the Social Security Act (Medicare Cost);

12.2.3.2 A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

12.2.3.3 An organization under an agreement under section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

12.2.3.4 An organization under a Medicare Select policy; and

12.2.3.5 The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section 12.2.2.

12.2.4 The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

12.2.4.1 Of the insolvency of the issuer or bankruptcy of the non-issuer organization or of other involuntary termination of coverage or enrollment under the policy;

12.2.4.2 The issuer of the policy substantially violated a material provision of the policy; or

12.2.4.3 The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

12.2.5 Subsequent first time enrollment with Medicare+Choice

12.2.5.1 The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under section 1894 of the Social Security Act, or a Medicare Select policy; and

12.2.5.2 The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such

subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

12.2.6 The individual, upon first becoming eligible for benefits under Part A of Medicare at age 65, enrolls in a Medicare+Choice plan under Part C of Medicare, or with a PACE provider under section 1894 of the social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment.

### 12.3 Guaranteed Issue Time Periods

12.3.1 In case of an individual described in section 12.2.1, the guaranteed issue period begins on the later of:

12.3.1.1 the date the individual receives a notice of termination or cessation of all supplemental health benefits (or if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or

12.3.1.2 the date that the applicable coverage terminates or ceases and ends sixty-three (63) days thereafter;

12.3.2 In the case of an individual described in sections 12.2.2, 3, 5 or 6 whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

12.3.3 In the case of an individual described in section 12.2.4.1, the guaranteed issue period begins on the earlier of:

12.3.3.1 the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and

12.3.3.2 the date that the applicable coverage is terminated and ends on the date that is sixty-three (63) days after the date the coverage is terminated;

12.3.4 In the case of an individual described in sections 12.2.2, 4.2, 4.3, 5 or 6 who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date: and

12.3.5 In the case of an individual described in 12.2 but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.

### 12.4 Extended Medigap Access for Interrupted Trial Periods

12.4.1 In the case of an individual described in 12.2.5. (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in 12.2.5.1 is involuntarily terminated within the first twelve (12) months of enrollment, and who,

without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section 12.2.5.

12.4.2 In the case of an individual described in section 12.2.6 (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in section 12.2.6 is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section 12.2.6; and

12.4.3 For purposes of sections 12.2.5 and 6, no enrollment of an individual with an organization or provider described in section 12.2.5.1, or with a plan or in a program described in section 12.2.6, may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

### 12.5 Products to Which Eligible Persons are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

12.5.1 Section 12.2.1, 2, 3, and 4 is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

12.5.2 Section 12.2.5 is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in section 12.5.1.

12.5.3 Section 12.2.6 shall include any Medicare supplement policy offered by any issuer.

### 12.6 Notification Provisions

12.6.1 At the time of an event described in section 12.2 because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under section 12.1. Such notice shall be communicated contemporaneously with the notification of termination.

12.6.2 At the time of an event described in section 12.2 because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under section 12.1. Such notice shall be communicated within ten (10) working days

of the issuer receiving notification of disenrollment.

**7 DE Reg. 800 (12/1/02)**

**\* PLEASE NOTE: AS THE REST OF THE REGULATION WAS NOT AFFECTED, IT IS NOT BEING REPRODUCED HERE.**

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**DEPARTMENT OF LABOR**  
**COUNCIL ON APPRENTICESHIP & TRAINING**  
Statutory Authority: 19 Delaware Code,  
Section 202(a) (19 Del.C. §202(a))

**Notice of Proposed Rule Changes:**

**Summary:**

The Council on Apprenticeship and Training proposes to recommend to the Secretary of Labor a change to Rule 106.5(D) of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The proposal would change the standard ratio of apprentice to journeyman in the plumber/pipefitter trade. The current ratio of 1 to 5 would be a more liberal 1 to 3.

**Comments:**

The proposed rule is published in the Delaware Register of Regulations and two newspapers. Copies are available at the Department of Labor, Division of Employment and Training, 4425 N. Market Street, Wilmington, DE 19802. A copy can be obtained by contacting Kevin Calio, Director of Apprenticeship and Training, at (303) 761-8118. Interested persons can submit written comment to the Council on Apprenticeship and Training c/o Kevin Calio at the above address until the time set for the public hearing.

**Public Hearing:**

A public hearing will be held at at 10:00 a.m. on August 3, 2004 at the Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, DE 19802 to receive comment. The Council will consider recommending the change to the Secretary of Labor at a meeting following the public hearing.

**Proposed Recommendation**

**106.5 Standards of Apprenticeship**

The following standards are prescribed for a Program.

(A) The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in

an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

(B) The standards must contain provisions concerning the following:

(1) The employment and training of the Apprentice in a skilled occupation;

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

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

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

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

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

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

1) 1 to 7 year programs

2) starting pay must be at least minimum wage

3) final period must be at least 85%

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

1st 1,000 hours: 40%

2nd 1,000 hours: 85%

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

1st 1,000 hours: 40%

2nd 1,000 hours: 51%

3rd 1,000 hours: 63%

4th 1,000 hours: 85%

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

1st 1,000 hours: 40%

2nd 1,000 hours: 48%

3rd 1,000 hours: 57%

# PROPOSED REGULATIONS

4th	1,000 hours:	65%
5th	1,000 hours:	74%
6th	1,000 hours:	85%

14th 1,000 hours: 85%

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

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

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

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

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

1st	1,000 hours:	40%
2nd	1,000 hours:	44%
3rd	1,000 hours:	48%
4th	1,000 hours:	52%
5th	1,000 hours:	56%
6th	1,000 hours:	60%
7th	1,000 hours:	64%
8th	1,000 hours:	68%
9th	1,000 hours:	72%
10th	1,000 hours:	76%
11th	1,000 hours:	81%
12th	1,000 hours:	85%

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

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

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

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

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

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

(11) that the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyperson wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

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

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

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

(2) The following have been recognized to be the industry standard for the listed trades:

Ratio of Apprentice Journeypersons*	
1 up to 4	Sheet Metal Worker
1 up to 4	Insulation Worker
1 up to 4	Asbestos Worker
1 up to 3	Industrial Maintenance Mechanic

1 up to 3	<u>Plumbers/Pipefitters</u>
1 up to 3	Electrician
1 up to 3	Precision Instrument Repairers
1 up to 3	Glaziers
1 up to 2	Roofers
1 up to 1	Sprinkler Fitters

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

(3) Exceptions.

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

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

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

(E) At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs with fewer than five (5) Apprentices shall not be required to comply with this part.

(F) A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

(G) Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

(H) The required minimum qualifications for persons entering an Apprentice Program as defined in Section 106.2(C) must be met.

(I) Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

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

(K) Transfer of Employer's training obligation through

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

(L) These Standards shall contain a statement of assurance of qualified training personnel.

(M) There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

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

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

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

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

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

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

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

(U) There will be provisions for a participating Employer's Agreement.

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

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

(X) Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted

in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a “memorandum of understanding” has been signed by an individual state and the state of Delaware.

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

**\* PLEASE NOTE: AS THE REST OF THE REGULATION WAS NOT AFFECTED, IT IS NOT BEING REPRODUCED HERE.**

## DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. §121(b))

### Notice of Proposed Adoption and Amendment of Regulations of the State Bank Commissioner

#### Summary

The State Bank Commissioner proposes to adopt amended Regulation 708 and new Regulations 714 and 1113. Proposed amended Regulation 708 (“Establishment of a Branch Office by a Bank or Trust Company”) is being amended to clarify that it applies only to applications to open traditional branches under § 770(a) of Title 5 and not to mobile branches under § 770(c); that the Commissioner may designate certain portions of such an application as confidential; and that the application will not be deemed filed until it is complete. Proposed new Regulation 714 (“Establishment of a Mobile Branch Office by a Bank or Trust Company”) provides a similar structure for applications to establish mobile branches under § 770(c), establishes a procedure for advanced notification to the Commissioner of proposed changes in the manner or area of operation of a mobile branch, and requires the maintenance an operations log for the mobile branch. Proposed new Regulation 1113 (“Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Ch. 19 of Title 30”) provides for a subsidiary that is not itself a banking organization or trust company to opt out of the bank franchise tax structure as allowed by § 1101(e) of Title 5 of the Delaware Code and includes forms for that election as well as for an annual report to confirm the subsidiary’s continued eligibility. The State Bank Commissioner would adopt proposed amended Regulation No. 708 and new Regulations 714 and 1113 on or after August 4, 2004. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the Delaware Code.

#### Comments

Copies of the proposed amended and new regulations are published in the Delaware Register of Regulations. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE and are available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended and new regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received before the public hearing scheduled for August 4, 2004.

#### Public Hearing

A public hearing on the proposed regulations will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE on August 4, 2004 commencing at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

#### **708 Establishment of a Branch Office by a Bank or Trust Company 5 Del.C. §770(a)**

Formerly Regulation No.: 5.770.0009

#### Proposed

##### 1.0 Scope

1.1 This regulation establishes procedures for the filing of an application to establish a branch office of a bank or trust company pursuant to Section 770(a) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the “Commissioner”) will review and act upon such applications. An application to establish a mobile branch office pursuant to Section 770(c) of Title 5 is covered separately under Regulation No. 714.

##### 2.0 Application

2.1 An application pursuant to Section 770(a) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such forms the Commissioner may designate from time-to-time for that purpose, and shall include the following:

2.1.1 Name of applying bank or trust company.

2.1.2 Location of proposed branch office, including address.

2.1.3 Explanation of the necessity for the

opening of the branch office.

~~2.1.3~~ 2.1.4 ~~The~~ Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the application as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

### 3.0 Fee

The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

### 4.0 Notice

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(a) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

### 5.0 Additional Information, Investigation and Hearing

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner ~~at his~~ has discretion ~~may~~ to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

### 6.0 Decision

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the branch office.

### 7.0 Certificate of Authority

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved branch office.

### 8.0 Time to Open Approved Branch Office

8.1 Branch offices approved in accordance with Section 770(a) of Title 5 of the **Delaware Code** and this

regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch office extend the initial opening date to a date greater than one year; ~~if by his review he determines upon a determination~~ that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the branch office unless ~~the branch~~ that office is actually opened for business. Unavoidable delay in opening the branch office due to construction problems ~~or controls~~ or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

## **714 Establishment of a Mobile Branch Office by a Bank or Trust Company** **5 Del.C. §770(c)**

### **Proposed**

#### **1.0 Scope**

1.1 This regulation establishes procedures for the filing of an application to establish a mobile branch office of a bank or trust company pursuant to Section 770(c) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a branch office pursuant to Section 770(a) of Title 5 that is not a mobile branch is covered separately under Regulation No. 708.

#### **2.0 Application**

2.1 An application pursuant to Section 770(c) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such form as the Commissioner may designate from time-to-time for that purpose, and shall include the following:

2.1.1 Name of applying bank or trust company.

2.1.2 The area in which the mobile branch office will operate.

2.1.3 The manner of operation of the mobile branch office.

2.1.4 An explanation of the necessity for the opening of the mobile branch office.

2.1.5 Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the applications as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the

information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

### **3.0 Fee**

3.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

### **4.0 Notice**

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(c) of Title 5 of the **Delaware Code** and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

### **5.0 Additional Information, Investigation and Hearing**

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner has discretion to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

### **6.0 Decision**

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the mobile branch office.

### **7.0 Certificate of Authority**

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved mobile branch office.

### **8.0 Time to Open Approved Mobile Branch Office**

8.1 Mobile branch offices approved in accordance with Section 770(c) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issued the Certificate of Authority. The Commissioner may upon review of the application for such mobile branch office extend the initial opening date to a date greater than one year upon a determination that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion

date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the mobile branch office unless the mobile branch is actually opened for business. Unavoidable delay in opening the mobile branch office due to construction problems or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

### **9.0 Changes in Manner or Area of Operation**

9.1 A bank or trust company that is operating an approved mobile branch office shall notify the Commissioner, in writing, in advance of any change in the manner or area of operation of the mobile branch office. Any such change shall be deemed approved unless the Commissioner notifies the bank or trust company otherwise with 20 days of the Commissioner's receipt of that notice. The Commissioner may decline to approve any of the changes, or may direct the bank or trust company to submit a new application in accordance with this regulation.

### **10.0 Operations Log**

After the mobile branch begins operations, the bank or trust company operating that branch must maintain a log of operations, indicating the date, specific location, and a description of each stop (e.g., office, store, residence).

### **1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30**

#### **Proposed**

#### **1.0 Qualifications for Election**

Pursuant to 5 **Del.C.** §1101(e), a subsidiary corporation of a banking organization or trust company may elect to be taxed in accordance with Chapter 19 of Title 30 if the subsidiary is not itself a banking organization or trust company, if the subsidiary is not described in §1902(b)(8) of Title 30, and if the subsidiary is not engaged in the sale, distribution, underwriting of, or dealing in, securities.

#### **2.0 Effect**

If a valid election is made, the electing subsidiary shall not be considered a subsidiary corporation of its parent banking organization or trust company for the purposes of Chapter 11 of Title 5, and the income of the electing subsidiary shall be excluded from the taxable income of its parent banking organization or trust company for the tax year involved.

**3.0 Filing**

An electing subsidiary shall make this election by filing the original of Form A under this regulation with the State Bank Commissioner; 555 E. Loockerman Street; Suite 210; Dover, DE, 19901 and a copy with the Delaware Division of Revenue; 820 N. French Street; Wilmington, DE 19801.

**4.0 Reporting Requirements**

Every year, an electing subsidiary shall file with the State Bank Commissioner on or before the date that its Delaware State Income Tax Return is due (1) Form B under this regulation, and (2) a copy of its Delaware State Income Return as filed with the Delaware Division of Revenue.

**5.0 Termination of Election**

An election under this regulation remains in effect until terminated. An electing subsidiary may terminate its election by filing a notice to that effect with the State Bank Commissioner and the Delaware Division of Revenue.

**FORM A**

**Election of a Subsidiary Corporation to be Taxed in Accordance with Chapter 19 of Title 30**

The subsidiary corporation identified below hereby elects to be taxed in accordance with Chapter 19 of Title 30 of the Delaware Code.

1. (a) Name and address of subsidiary corporation:  
\_\_\_\_\_  
\_\_\_\_\_

(b) State of incorporation of subsidiary corporation:  
\_\_\_\_\_

(c) Federal Employer Identification Number of subsidiary corporation:  
\_\_\_\_\_

2. (a) Name and principal place of business of subsidiary corporation's parent banking organization or trust company:  
\_\_\_\_\_  
\_\_\_\_\_

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company:  
\_\_\_\_\_

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?  
yes no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of

corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 Del.C. § 1902(b)(8)? yes no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 Del.C. §101? yes no

6. Describe the principal activities of the subsidiary corporation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Effective date of election: \_\_\_\_\_  
The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make an election to be taxed under 30 Del.C. Ch. 19 and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

Date Signature of President, Treasurer Title or Other Proper Officer

Print Name Phone No.

Print Address

Mail or deliver original completed form to:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901

Mail or deliver copy to:  
Delaware Division of Revenue  
820 N. French Street  
Wilmington, DE 19801.

# PROPOSED REGULATIONS

## FORM B

### Annual Report of a Subsidiary Corporation Electing to be Taxed in Accordance with Chapter 19 of Title 30

Tax Year \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Print Address

1. (a) Name and address of subsidiary corporation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Federal Employer Identification Number of subsidiary corporation:

\_\_\_\_\_

2. (a) Name and address of parent banking organization or trust company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: \_\_\_\_\_

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?

yes no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 Del.C. § 1902(b)(8)? yes no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 Del.C. §101? yes no

Attach copy of the subsidiary corporation's Delaware Income Tax Return for the tax year listed above.

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make this return and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

\_\_\_\_\_  
Date Signature of President, Treasurer Title  
or Other Proper Officer

\_\_\_\_\_  
Print Name Phone No.

Mail or deliver original completed form to:  
Office of the State Bank Commissioner  
555 E. Loockerman Street, Suite 210  
Dover, DE 19901

**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.

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**DEPARTMENT OF EDUCATION****PROFESSIONAL STANDARDS BOARD**

14 DE Admin. Code 106

Statutory Authority: 14 Delaware Code,  
Section 122(e) (14 Del.C. §122(d))**REGULATORY IMPLEMENTING ORDER****Regulation 1501 Knowledge, Skills And Responsibility  
Based Supplements For Educators****I. Summary Of The Evidence And Information  
Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1501 Knowledge, Skills and Responsibility Based Supplements for Educators. This regulation includes the requirements for, and payment of, salary supplements established by 14 **Del.C.** §1305. This regulation applies to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and/or for accepting additional responsibility supplements that impact student achievement. It is necessary to amend this regulation to add requirements for

reauthorization, replication and re-qualification of clusters and to set forth procedures for payment of salary increments to educators.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on April 20, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

**II. Findings Of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure and certification of educators.

**III. Decision To Adopt The Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text And Citation**

The text of the regulation amended shall be in the form

attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1501 from the *Administrative Code of Regulations* of the Department of Education.

### V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>RD</sup> DAY OF JUNE, 2004

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau
Patricia Clements	John Pallace
Edward Czerwinski	Karen Schilling Ross
Karen Gordon	Carol Vukelich
Barbara Grogg	Geraldine A. Williams
Bruce Harter	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 17th Day Of March, 2004

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Valarie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

### 1501 Knowledge, Skills, And Responsibility Based Salary Supplements For Educators

#### 1.0 Content:

1.1 The following requirements shall be met in order to receive the salary supplements established by 14 **Del.C.** §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary paid in accordance with the provisions of 14 **Del.C.** §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and for accepting additional responsibility assignments ~~supplements~~ that impact student achievement. Supplements are available subject to an annual appropriation from the Legislature.

#### 5 DE Reg. 2297 (6/1/02)

#### 2.0 Definitions:

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

"**Approved Cluster**" means a professional development cluster that meets the criteria specified in 3.1 of this Regulation and that has been ~~designated~~ approved by the Standards Board and the State Board as the basis for awarding a specific salary supplement.

"**Delaware Administrator Standards**" means standards for education administrators approved by the ~~Secretary of Education~~ Standards Board and the State Board of Education, as per 14 **DE Admin. Code** ~~394~~ 1594, Delaware Administrator Standards.

"**Delaware Content Standards**" means K-12 ~~student~~ curriculum content standards approved by the Secretary of Education and the State Board of Education, as per 14 **DE Admin. Code** 501, State Content Standards.

"**Delaware Professional Teaching Standards**" means standards ~~of teaching for teachers~~ approved by the ~~Secretary of Education~~ Standards Board and the State Board of Education, as per 14 **DE Admin. Code** ~~393~~ 1593, Delaware Professional Teaching Standards.

"**Department**" means the Delaware Department of Education.

"**Educator**" means ~~an employee paid under 14 **Del.C.** §1305~~ a public school employee who holds a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

"**Hours of Engagement**" means time spent in classes, seminars, workshops, collaborative work groups, learning communities, cohort, school, or district teams, and time engaged in research-based activities which result in the acquisition of knowledge and skills which lead to more effective instruction.

"**Knowledge and Skills**" means understandings and abilities that, when acquired by educators, lead to more effective instruction.

"**NSDC Standards for Staff Development**" means standards adopted by the National Staff Development Council for high quality staff and professional development.

"**Professional Development Cluster**" or "**Cluster**" means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"**Provider**" means a local school district, charter school, college, educationally related organization, or professional organization that delivers professional development clusters approved by the Standards Board and the State Board to educators.

"Reauthorization of an Approved Cluster" means the process a provider uses to seek continued approval, after the initial five year approval period, of an approved cluster.

"Replication of Approved Clusters" means an approved cluster being delivered by a provider other than the developer of the cluster.

"Re-qualification of an Approved Cluster" means the process a provider uses to set forth the activities that an educator would engage in to qualify for an extension of five(5) additional years of a salary supplement.

"Responsibilities Assignments" means educators' additional responsibility assignments for educators that are academic in nature and that impact student achievement. For purposes of this regulation and pursuant to 14 Del.C. §1305(o) Extra curricular or non-instructional supervisory activities are specifically excluded from this definition responsibility assignments under this regulation.

"Salary Supplement", when referring to knowledge, skills, and responsibility based supplements, means additional state salary, as described in 14 Del.C. §1305.

"Standards Board" means the Professional Standards Board of the State of Delaware established in response to 14 Del.C. §1205.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 Del.C. §104.

**3.0 Knowledge and Skills:**

3.1 The Standards Board shall, on no less than an annual basis, submit to the State Board for approval, lists of proposed new professional development clusters in specific areas of knowledge and skills which shall serve as the basis for awarding salary supplements.

3.42 The criteria for evaluating professional development clusters designed to promote acquisition of knowledge and skills are based upon:

3.42.1 Delaware Professional Teaching Standards or Delaware Administrator Standards or their equivalent (i.e., national standards from educators' specialty-area organizations that complement the Delaware standards).

3.42.2 Delaware content standards or their equivalent (i.e., national standards from content-specialty groups, if there are no Delaware standards for the content area).

3.42.3 National Staff Development Council Standards for Staff Development (NSDC, 2001).

3.23 Clusters may include a combination of formal courses at graduate or undergraduate levels, and other research-based activities which conform to the NSDC Standards for Staff Development.

3.24 Clusters may be comprised of related segments which may be completed separately over a specified period of time, not to exceed 5 years, as included in the cluster design and approved by the Standards Board and the State

Board.

3.25 Voluntary performance or assessment-based specialty certifications awarded for meeting standards established by national professional organizations shall be evaluated as proposed clusters in accordance with this regulation.

3.26 The specific percentage of salary assigned to each knowledge and skills supplement, provided that no supplement may be less than 2% nor more than 6% of an educator's base state salary, shall be submitted with the list of professional development clusters and specific areas of knowledge and skills.

3.56.1 A cluster qualifying an educator for a supplement of 2% shall consist of no less than 90 hours of engagement by the educator.

3.56.2 A cluster qualifying an educator for a supplement of 4% shall consist of no less than 180 hours of engagement by the educator.

3.56.3 A cluster qualifying an educator for a supplement of 6% shall consist of no less than 270 hours of engagement by the educator.

3.67 Knowledge and skills which, once acquired, are expected to lead to more effective instruction for the duration of an educator's career are designated as permanent supplements.

3.78 Knowledge and skills related to new technologies, curriculum adoptions, and short-term strategies shall have a duration of five (5) years, and may be renewed by successfully completing renewal. Educators may re-qualify for a cluster for an additional five (5) years by completing the activities set forth in accordance with cluster approval re-qualification procedures established by the Standards Board.

3.89 The provider will shall present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator. The provider shall provide the Department with a list of educators who have satisfactorily completed an approved cluster

3.9 Annually, the Standards Board shall submit to the State Board for approval a list of all clusters proposed for continued approval, renewal, and non-renewal.

**4.0 Responsibilities:**

The Standards Board shall, on no less than an annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.

4.1 Responsibility assignments shall be:

4.1.1 Focused on school improvement issues that impact student achievement;

4.1.2 Supported by high quality, targeted

professional development, and

4.1.3 Academic in nature.

4.2 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

5 DE Reg. 2297 (6/1/02)

**4.0 Replication of Approved Clusters.**

4.1 The developer of an approved cluster shall decide if a cluster can be replicated, and shall set forth the conditions, if any, under which the approved cluster may be offered by a provider other than the developer of the approved cluster. The Professional Development and Associated Compensation Committee shall review and approve applications for replication of a cluster, and shall forward approved applications for replication to the Standards Board for action. The Standards Board shall forward approved applications for replication to the State Board for concurrence.

5.0 Approval of Professional Development Clusters and Responsibilities:

5.1 The Standards Board's standing committee on professional development and associated compensation shall provide the Standards Board with recommended lists of professional development clusters and responsibility assignments in accordance with this regulation.

5.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.

5.3 The lists of professional development clusters and responsibilities shall be forwarded to the State Board with a recommendation for approval.

**5.0 Procedures for Re-qualification of a Cluster.**

5.1 The cluster provider may submit a proposal for activities for re-qualification to update an individual educator's skills and knowledge acquired in an approved cluster to the Professional Development and Associated Compensation Committee for review. The Professional Development and Associated Compensation Committee may recommend to the Standards Board approval of activities for re-qualification of a cluster for a period not to exceed five (5) years. The Standards Board and the State Board shall review and approve all re-qualification requirements.

5.2 The proposal for re-qualification activities of an approved cluster must include activities which are at least as

rigorous as the original activities of the cluster and shall include, but are not limited to, the following:

5.2.1 The planned activities required to update the skills and knowledge acquired.

5.2.2 The number of hours of engagement the participant must participate in to be eligible for re-qualification of a salary supplement. The number of hours of engagement for the re-qualification of a cluster must be the same level as the original cluster, unless the provider submits re-qualification activities for a lesser percentage (i.e., a 4% cluster re-qualifies as a 2% cluster).

5.2.3 The specific skills and knowledge that will be updated or re-qualified and how such activities will directly impact students in the classroom.

5.3 All proposals for re-qualification activities must be reviewed by the Professional Development and Associated Compensation Committee, and approved by the Standards Board and the State Board.

6.0 Confirmation of Educators' Eligibility for Salary Supplements:

6.1 Knowledge and Skills: The district or charter school shall notify educators annually, in writing, of the clusters it approves from the State Board approved list for knowledge and skills salary supplements.

6.2 Those clusters approved by districts or charter schools shall not require any additional prior approval. After completing the entire cluster, an educator shall submit documentation to the local district of fulfilling the requirements of the cluster's design.

**6.0 Procedures for Reauthorization of Approved Clusters.**

6.1 A provider of a cluster may apply for reauthorization of a cluster by submitting an application for reauthorization to the Professional Development and Associated Compensation Committee, which shall review the application and, if appropriate, forward a recommendation to the Standards Board and the State Board for approval. Reauthorization approval of a cluster shall be for a period of five (5) years.

6.2 Approval of a cluster is valid for five years, and may be reauthorized upon review and approval of an application for reauthorization from the provider.

6.3 Cluster developers shall, when applying for reauthorization, provide the Professional Development and Associated Compensation Committee with an evaluation of the effectiveness of a cluster in achieving the stated goals. The evaluation shall include evidence of a positive impact on educators' skills and knowledge and student learning. Evaluation reports shall be submitted on the form provided by the Standards Board.

7.0 Payment of Salary Supplements:

[RESERVED]

### **7.0 Revocation of Approval of a Cluster.**

7.1 Cluster applications are approved for a period of five years. The Standards Board may, however, revoke the approval of a cluster at any time during the five year period of approval for good cause. "Good cause" includes, but is not limited to:

7.1.1 Failure on the part of the provider to complete the delivery of a cluster; or

7.1.2 Failure of the provider to submit evidence of completers to DOE; or

7.1.3 Evidence, as supplied by participant evaluation and verified by the Professional Development and Associated Compensation Committee, of failure to provide content and activities as set forth in the approved application.

7.1.4 Other conduct which negatively impacts the ability of educators to gain new knowledge and skill, such as misrepresentation of the cluster content on the application.

8.0 Salary supplements paid to an educator shall not exceed 15% of the state share of the educator's salary.

5 DE Reg. 2297 (6/1/02)

### **8.0 Responsibility Assignments.**

8.1 The Standards Board shall, on no less than an annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.

8.2 Responsibility assignments shall be:

8.2.1 Focused on school improvement issues that impact student achievement;

8.2.2 Supported by high quality, targeted professional development, and

8.2.3 Academic in nature.

8.3 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position by the Standards Board or local district, charter school, or other employing authority, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

8.4 Extra responsibility salary supplements may be renewed.

### **9.0 Approval of Professional Development Clusters and Responsibilities:**

9.1 The Standards Board's Standing Committee on Professional Development and Associated Compensation

shall provide the Standards Board with recommendations for approval of professional development clusters, reauthorized clusters, re-qualification activities, and responsibility assignments in accordance with this regulation.

9.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.

9.3 If approved by the Standards Board, the lists of professional development clusters, reauthorized clusters, re-qualification requirements and responsibility assignments shall be forwarded to the State Board with a recommendation for approval.

9.4 Each district, charter school or other employing authority shall notify educators at least annually, in writing, of the clusters it disapproves from the State Board approved list of knowledge and skills clusters.

### **10.0 Educators' Eligibility for Salary Supplements**

10.1 Skills and Knowledge Salary Supplements.

10.1.1 The provider will present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator.

10.1.2 After completing the entire cluster, the cluster provider shall submit documentation to the Department certifying that the educator fulfilled the requirements of the cluster's design.

10.2 Responsibility Assignments: An educator shall provide the local district, charter school or other employing authority with such information as may be required to enable the local district, charter school or other employing authority to verify that the educator has fulfilled the requirements of 8.3 of this regulation.

### **11.0 Payment of Salary Supplements:**

11.1 Salary Supplements for Clusters.

11.1.1 Salary supplements earned by educators who are paid in accordance with the provisions of 14 Del.C. §1305 as a result of completion of an approved knowledge and skills cluster shall be effective the first of the month following receipt by the Department of satisfactory completion of a cluster, and shall be paid as part of the educator's salary for the duration of the time approved for the cluster by the Standards Board and the State Board. No educator is entitled to payment for the same cluster more than once.

11.2 Salary Supplements for Extra Responsibility Assignments.

11.2.1 Salary supplements earned by educators who are paid in accordance with the provisions of 14 Del.C. §1305 as a result of fulfilling extra responsibility assignments shall be effective the first of the month

following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the extra responsibility assignment, and shall be paid annually as a single payment or as an additional salary amount spread evenly across an educator's contract period.

12.0 Salary supplements paid to an educator paid in accordance with the provisions of 14 Del.C. §1305 shall not exceed 15% of the State share of the educator's salary.

## ORDER REPEALING RULES AND REGULATIONS

### Repeal Of Regulation 1505 Professional Growth Programs

#### I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 1505. It is necessary to repeal this regulation as it is effective through June 30, 2004 only. It will be replaced by 14 DE Admin. Code 1507 Professional Growth Salary Increments, which addresses movement by educators on the salary schedule set forth in 14 Del.C. §1305.

Notice of the proposed repeal of the regulation was published in the News Journal and Delaware State News on April 20, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comment has been received.

#### II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal the regulation as the subject is regulated by 14 DE Admin. Code 1507, which is in compliance with 14 Del.C. §1305.

#### III. Decision To Repeal The Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 Del.C. §1203 and § 1205(b), the regulation attached hereto as Exhibit "B" is hereby repealed.

#### IV. Text And Citation

The text of the DE Admin. Code 1505, attached hereto as Exhibit "B" is repealed, and said regulation shall be

deleted from the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL  
STANDARDS BOARD THE 3RD DAY OF JUNE, 2004.

Harold Roberts, Chair	Leslie Holden
Sharon Brittingham	Carla Lawson
Heath Chasanov	Mary Mirabeau
Patricia Clements	John Pallace
Edward Czerwinski	Karen Schilling Ross
Karen Gordon	Carol Vukelich
Barbara Grogg	Geraldine A. Williams
Bruce Harter	

FOR IMPLEMENTATION BY THE DEPARTMENT  
OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 17th Day Of June, 2004

#### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

#### ~~1505 Professional Growth Programs (Effective through 6/30/04 only)~~

#### ~~1.0 Content:~~

~~This regulation shall apply to professional growth programs for educators, pursuant to 14 Del.C. §1305.  
7 DE Reg. 161 (8/1/03)~~

#### ~~2.0 Definitions:~~

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

~~"Department" means the Delaware Department of Education.~~

~~"Graduate level course" means any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.~~

~~"Individual professional growth credits" means~~

individual activities (i.e., projects, travel, and work experience) which contribute to the professional growth of the school employee in his/her assignment.

**"In-service credit"** means credit offered by school districts, charter schools, Delaware educationally related organizations, the Department, or individual professional growth programs and approved by the state in-service committee.

7 DE Reg. 161 (8/1/03)

**3.0 Credits.**

3.1 Three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) individual professional growth credits. Individual professional growth credits must have the prior approval of the Department and the local employing school district superintendent or charter school principal. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

**3.2 Credit Calculation.**

3.2.1 All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for professional growth activities will be calculated in the same manner as in-service credits.

**3.3 Acceptable Grades**

3.3.1 All grades for college-level credit submitted for a professional growth program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

**3.4 Acceptable Credits**

3.4.1 Credits for the professional growth programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

3.4.2 Up to nine (9) individual professional growth credits may be counted from the B+15 through the M+45.

3.4.3 Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

3.4.4 Undergraduate, in-service, and individual professional growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

3.4.5 For Trade and Industry teachers, a Bachelor's

degree equivalent shall be two years of college and six years of work experience (14 Del.C. §1301).

**3.5 Salary Increment.**

3.5.1 An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

3.6 Admittance to Graduate School: Applicants for a professional growth program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

**3.7 Acceptable Professional Degrees**

3.7.1 Professional degrees earned in areas other than professional education will not be accepted for the professional growth program unless the degree is directly related to an area of specialty in which the individual is employed.

3.7.2 To be counted for the professional growth program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

3.7.3 Individual courses in any area may be considered for acceptance in the professional growth program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

**3.8 Usable Credits.**

3.8.1 All credits and programs to be accepted for the professional growth program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

**3.9 Excess Graduate Level Credits.**

3.9.1 Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 professional growth programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 professional growth program.

**3.10 Effective Date of Salary Adjustment**

3.10.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

3.10.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

**3.11 Appeals Committee.**

3.11.1 A committee shall be called to review and make recommendations regarding an appeal that may result

as these rules are administered. The committee shall include the following: one (1) representative from the professional organization which represents the applicant, one (1) staff member from the Department; and one (1) representative from the Chief School Officers organization.

### 3.12 Application Procedures

3.12.1 The applicant shall secure the proper form from the local school district office, complete the form, and return it to his/her school district office for transmittal to the Office of Professional Accountability.

3.12.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the professional growth program.

3.12.3 Application for evaluation shall not be submitted prior to the completion of the professional growth program.

3.13 A salary increment for fiscal year 2004 (July 1 – June 30) based upon approval of the application must be received in the Office of Professional Accountability by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. No salary credit shall be retroactive into a prior fiscal year.

7 DE Reg. 161 (8/1/03)

## REGULATORY IMPLEMENTING ORDER

### REGULATIONS 1528, 1529, 1533, 1537, AND 1558

#### I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend **DE Admin. Code** 1528 Standard Certificate – Foreign Language Teacher Comprehensive; 1529 Standard Certificate – Foreign Language Teacher Secondary; 1533 Standard Certificate – Foreign Language Teacher Elementary; 1537 Standard Certificate – Bilingual Teacher (Spanish) Secondary; and 1558 Standard Certificate – Bilingual Teacher (Spanish) Elementary/Middle. These regulations apply to the requirements for Standard Certificates for Foreign Language and Bilingual Teachers as established by 14 **Del.C.** §1220(a). The amendments to these regulations are necessary to reflect the adoption of PRAXIS™ II qualifying scores for Delaware educators. In addition, course requirements and requirements for acquisition of foreign languages by teachers were revised.

Notice of the proposed amendment of the regulations

was published in the News Journal and the Delaware State News on April 4, 2004, in the form hereto attached as Exhibit “A”. The notice invited written comments. No comments were received.

#### II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend these regulations to comply with changes in statute regarding the licensure and certification of educators.

#### III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulations. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit “B” is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit “B”, and said regulation shall be cited as 14 **DE Admin. Code** 1528, 1529, 1533, 1537, and 1558 in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3RD DAY OF JUNE, 2004

Harold Roberts, Chair  
Sharon Brittingham  
Heath Chasanov  
Patricia Clements  
Edward Czerwinski  
Karen Gordon  
Barbara Grogg  
Bruce Harter

Leslie Holden  
Carla Lawson  
Mary Mirabeau  
John Pallace  
Karen Schilling Ross  
Carol Vukelich  
Geraldine A. Williams

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 17th Day Of June, 2004

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Valarie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

**1528 Standard Certificate Foreign Language Teacher  
 Comprehensive**

**1.0 Content**

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher Comprehensive (Grades K-12).

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

**2.0 Definitions**

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

**"Department"** means the Delaware Department of Education.

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

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

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

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a foreign language teacher comprehensive to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

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

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Elementary and Secondary Foreign Language Teaching in the language to be taught or,

3.2.2 A minimum of 27 semester hours to include Human Development, Methods of Teaching Foreign Language ~~at the Elementary School Level, Methods of Teaching Foreign Language at the Secondary School Level~~ (methods courses to include second language acquisition), Identifying and Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education; Second

Language Assessment and Testing; Curriculum and Material Design; and,

~~3.3 Specific Teaching Field~~

~~3.3.1.3~~ Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,

~~3.3.2~~ Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,

~~3.3.3.4~~ A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,

~~3.3.5~~ Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board ~~(when validated)~~ and an Advanced Low Level plus score on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.\*

\* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4 an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

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

**4.0** This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - comprehensive after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

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

**1529 Standard Certificate Foreign Language Teacher -  
 Secondary**

**1.0 Content:**

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher - Secondary (required in grades 9-12, and valid in grades 5-8 in a middle level school).

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

**2.0 Definitions**

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

"**Department**" means the Delaware Department of Education.

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

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

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

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a foreign language teacher - secondary to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

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

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in the language to be taught or,

3.2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Foreign Language, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, Second Language Assessment and Testing, Curriculum and Material Design; and

~~3.3 Specific Teaching Field~~

~~3.3.1~~2.3 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\*<sup>1</sup>; or,

~~3.3.2~~2.4 Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\*<sup>1</sup> or,

~~3.3.3~~2.4 Minimum of up to 30 semester hours above the intermediate level for the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher holds 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\*<sup>1</sup> or,

~~3.3.4~~2.5 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board (when validated) and, an Advanced Low Level ~~plus score~~ on the ACTFL Oral Proficiency Interview

and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.\*

\* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

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

**4.0** This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - secondary after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

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

### **1533 Standard Certificate Foreign Language Teacher - Elementary**

#### **1.0 Content**

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher - Elementary (required in grades K-6, and valid in grades 7-8 in a middle level school).

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

#### **2.0 Definitions**

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

"**Department**" means the Delaware Department of Education.

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

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

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

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a foreign language teacher elementary to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

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

3.2 Professional Education

3.2.1 Completion of an approved teacher

education program in Elementary Education/Foreign Language in the language to be taught; or,

3.2.2 Completion of an approved teacher education program in elementary education and,

3.2.2.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language Acquisition and,

3.2.2.2 Demonstrated knowledge of the culture in which the language is spoken natively including significant personal connection with that culture through life or work experience or appropriate course work in the culture; ~~or and,~~

3.2.3 Completion of an approved secondary teacher education program in the language to be taught and,

3.2.3.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language acquisition and,

3.2.3.2 A minimum of 24 semester hours to include Child/Human Development, Methods of Teaching Foreign Language at the Elementary School Level including Second Language Acquisition, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and,

### 3.3 Specific Teaching Field

3.3.1 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,

3.3.2 Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,

3.3.3 A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively\* or,

3.3.4 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board, (when validated) and an Advanced Low Level plus score on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively\*.

\*Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she

grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

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

**4.0** This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - elementary after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

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

### **1537 Standard Certificate Bilingual Teacher (Spanish) Secondary**

#### **1.0 Content**

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Bilingual Teacher (Spanish) B Secondary.

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

#### **2.0 Definitions**

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

**"Department"** means the Delaware Department of Education.

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

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

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

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a bilingual teacher (Spanish) - Secondary to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A Bachelor's degree from a regionally accredited college or university and completion of a teacher education program in Bilingual Education ~~at the Secondary Level (grades 7-12)~~ in the Language area of Spanish.

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

**4.0** If the candidate does not meet the requirements in 3.0 the following shall apply:

4.1 Complete the required course work in a teacher education program at the secondary level (grades 7-12) in a content area such as Biology, English or Special Education

plus the following:

4.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

4.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This course work shall be at or above the intermediate level; and demonstration of oral proficiency in the language area of Spanish by ~~scoring 165 on the PRAXIS II Test Module: Productive Language (0192); as adopted by the Standards Board and the State Board;~~ or

4.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Tests, ~~as adopted by the Standards Board and the State Board Modules as follows: 159 on Spanish: Content and Knowledge (0191) and 165 on Spanish: Productive Language (0192); and~~

4.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

4.1.3 In addition to 4.1.1 and 4.1.2 all candidates must meet the following requirements:

4.1.3.1 Completion of course work as indicated:

4.1.3.1.13 semester hours Methods of Teaching English as a Second Language;

4.1.3.1.23 semester hours Second Language Testing;

4.1.3.1.33 semester hours **[Remedial Corrective]** Reading (English); or 3 semester hours **[Remedial Corrective]** Reading (Spanish); and

4.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

4.1.3.2.1A three (3) semester hour course in Spanish culture; or documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.

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

**5.0** This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a bilingual teacher (Spanish) - Secondary after that date must comply with the requirements set forth in 14 **DE Admin. Code** 1516.

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

### **1558 Standard Certificate Bilingual Teacher (Spanish) Primary/Middle Level**

#### **1.0 Content**

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Bilingual Teacher (Spanish) Primary/Middle Level (K-8).

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

#### **2.0 Definitions**

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

**"Department"** means the Delaware Department of Education.

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

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

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

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a bilingual teacher (Spanish) Primary/Middle to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A Bachelor's degree from a regionally accredited college or university and completion of a teacher education program in Elementary, Primary or Middle Level (grade configurations K-8) Bilingual Education in the Language Area of Spanish.

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

**4.0** If the candidate does not meet the requirements in 3.0 the following shall apply:

4.1 Complete the required course work in a teacher education program in Elementary, Primary or Middle Level (grade configurations K-8) Regular Education plus provide the following:

4.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

4.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This course work shall be at or above the intermediate level; and Demonstration of oral proficiency in the language area of Spanish by meeting the appropriate qualifying score on the PRAXIS II Tests, as adopted by the Standards Board and the State Board; scoring 165 on the PRAXIS II Test Module: Productive Language (0192); or

4.1.1.2 ~~Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows:~~

~~4.1.1.2.1159 on Spanish: Content and Knowledge (0191) and~~

~~4.1.1.2.2165 on Spanish: Productive~~

Language (0192); and

4.1.24.1.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

4.1.3-2 In addition to 4.1.1 and 4.1.2 all candidates must meet the following requirements:

4.1.3-2.1 Completion of course work as indicated:

4.1.3-2.1.1 3 semester hours Methods of Teaching English as a Second Language;

4.1.3-2.1.2 3 semester hours Second Language Testing;

4.1.3-2.1.3 3 semester hours [**Remedial Corrective**] Reading (English); or

4.1.3-2.1.4 3 semester hours [**Remedial Corrective**] Reading (Spanish); and

4.1.3-2.2 Verification of knowledge of the Spanish culture as demonstrated by:

4.1.3-2.2.1 A three (3) semester hour course in Spanish culture; or

4.1.3-2.2.2 Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

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

**5.0** This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a bilingual teacher (Spanish) primary/middle level after that date must comply with the requirements set forth in **14 DE Admin. Code 1516**.

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

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code, Section 3006A (16 **Del.C.** §3006A)

#### **ORDER**

#### **Regulations for Assisted Living Facilities**

##### **Nature of the Proceedings**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with **29 Del.C.** Ch. 101 to amend the regulations for Assisted Living Facilities. The amendments relate to incident reporting by facilities,

requirements for electrical generators and an exemption for subcutaneous venous ports from the prohibition against the admission of residents with central lines. On May 1, 2004, DLTCRP published proposed amendments to the regulations in the Register of Regulations and received written and verbal comments at public hearings on June 2 and June 3, 2004.

Upon review of the comments received, the Division of Long Term Care Residents Protection has revised the proposed regulations pertaining to requirements for electrical generators. Those revised proposed regulations appear elsewhere in this edition of the Register and will be the subject of a further public hearing. Comments received at the June public hearings regarding requirements for electrical generators will be discussed when those regulations are published as final regulations.

The proposed regulations relating to incident reporting and the exemption for subcutaneous venous ports are attached and are being promulgated as final regulations. A discussion of the comments received during the June public hearings is in the accompanying Summary of Evidence.

#### **Findings of Fact**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Assisted Living Facilities are adopted effective July 10, 2004.

Vincent P. Meconi,  
Secretary, Department of Health  
and Social Services  
Date of Signature 6.15.04

#### **Summary of Evidence**

Comments on the proposed regulations have been received and evaluated as follows:

One commenter referencing 63.1807(g) said that when incident reports are made, there should be a double check to make sure that written comments follow so that the reports are not lost. We believe that the section the commenter is actually referencing is 63.1806. It should be noted that the Division maintains records of all reports that are made in any form.

Two comments were received in reference to provisions regarding incident reporting, including reporting of power outages, which allow facilities eight hours to report to the Division. One commenter said that the timeframe was too long. The other commenter said that the timeframe was too short. The eight-hour timeframe is retained in the regulations as a reasonable amount of time.

Another comment said that persons with subcutaneous

ports should not be allowed in assisted living facilities. We believe that an exception for this particular type of central line is appropriate both because a subcutaneous port is not subject to being accidentally dislodged and because the facility staff is not required or permitted to provide any care to a subcutaneous port, the care of which is handled by health care professionals outside of the facility.

Finally, two commenters sought clarification as to who determines which rooms in a facility will be selected for congregate use during a power outage. This decision is left to the discretion of each facility. Note also that a "room" may be construed to include a contained common area.

### Regulations for Assisted Living Facilities

#### SECTION 63.0 PURPOSE

The Department of Health and Social Services is issuing these regulations to promote and ensure the health, safety, and well-being of all residents of assisted living facilities. These regulations are also meant to ensure that service providers will be accountable to their residents and the Department, and to differentiate assisted living care from skilled nursing care. The essential nature of assisted living is to offer living arrangements to medically stable persons who do not require skilled nursing services and supervision. The regulations establish the minimal acceptable level of services for residents of assisted living facilities.

#### SECTION 63.1 AUTHORITY AND APPLICABILITY

These regulations are promulgated in accordance with 16 Del.C. Chapter 11 and shall apply to any facility providing assisted living to elderly individuals or adults with disabilities. The term "assisted living" shall not be used as part of the official name of any facility in this State unless the facility has been so licensed by the Department of Health and Social Services.

#### SECTION 63.2 GLOSSARY OF TERMS

63.201 Activities of Daily Living ("ADLs") - Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting.

63.202 Administration of Medication - The process whereby a single dose of a prescribed drug is given to a resident by an authorized licensed person, as described in 24 Del.C. §1902.

63.203 Assisted Living - A special combination of housing, supportive services, supervision, personalized assistance and health care designed to respond to the individual needs of those who need help with activities of daily living and/or instrumental activities of daily living.

63.204 Assisted Living Facility - A licensed entity that provides the services described in 63.203.

63.205 Assistive Technology - Any item, piece of

equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.

63.206 Assistance With Self-Administration of Medication ("AWSAM") - Help with medication provided by facility personnel who are not nurses or nurse practitioners but who have successfully completed a Board of Nursing-approved medication training program in accordance with the Delaware Nurse Practice Act, 24 Del.C. Ch. 19, and applicable rules and regulations. Help with medication includes holding the container, opening the container, and assisting the resident in taking the medication, other than by injection, following the directions of the original container, and documenting in the medication log that each medication has been taken by the residents.

63.207 Communicable Disease - An illness caused by a microorganism or its toxin characterized by spread from host to victim by air, contact, blood, or bodily fluids.

63.208 Contract - A legally binding written agreement between the facility and the resident which enumerates all charges for services, materials, and equipment, as well as non-financial obligations of both parties, as specified in these regulations.

63.209 Cuing - The act of guiding residents, verbally or by gestures, to facilitate memory and/or organize verbal and/or behavioral responses.

63.210 Department - Department of Health and Social Services.

63.211 Division - Division of Long Term Care Residents Protection.

63.212 Durable Medical Equipment - Equipment capable of withstanding repeated use, primarily and customarily used to serve a medical purpose, generally not useful to a person in the absence of an illness or injury, and needed to maintain the resident in the facility, e.g., wheelchairs, hospital beds, oxygen tanks.

63.213 Homelike - Having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences, in accordance with the facility's policies. A homelike environment provides residents with an opportunity for self-expression and encourages interaction with community, family, and friends.

63.214 Hospice - An agency licensed by the State of Delaware that provides palliative and supportive medical and other health services to terminally ill residents and their families.

63.215 Incident - An occurrence or event, a record of which must be maintained in facility files, ~~that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to~~

~~abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment, which includes all reportable incidents and the additional occurrences or events listed in Section 63.1805 of these regulations.~~ (Also see Reportable Incident, 63.222.)

63.216 Individual Living Unit - A separate dwelling area within an assisted living facility which has living and sleeping space for one or more residents, as prescribed in these regulations.

63.217 Instrumental Activities of Daily Living (“IADLs”) - Home management skills, such as shopping for food and personal items, preparing meals, or handling money.

63.218 Managed/Negotiated Risk Agreement – A signed document between the resident and the facility, and any other involved party, which describes mutually agreeable action balancing resident choice and independence with the health and safety of the resident or others.

63.219 Medication Log – A written document in which licensed personnel and unlicensed personnel who have completed AWSAM training record administration/assistance with the resident’s medications. The log shall list the resident’s name; date of birth; allergies; reason the medication is given; prescribing practitioner and phone number; special instructions; and the dosage, route(s), and time(s), for all medications received/taken with staff administration or staff assistance. The log is signed/initialed by a staff member after each resident has received/taken the appropriate medication, or when the medication was not taken/given as prescribed.

63.220 Medication Management by an Adult Family Member/Support Person – Any help with prescription or non-prescription medication provided by an adult family member/support person, as identified in the resident’s contract and service agreement.

63.221 Personal Care Supplies - Those supplies, often disposable, used by a resident, such as incontinence products and hygiene supplies.

63.222 Reportable Incident - An occurrence or event which must be reported ~~at once~~ immediately to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation as those terms are defined in 16 Del. Code §1131. Reportable incident also includes ~~an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident’s health and safety.~~ an occurrence or event listed in Section 63.1807 of these regulations. (Also see Incident, 63.215.)

63.223 Representative - A person acting on behalf of the resident pursuant to Delaware law.

63.224 Resident - An individual 18 years old or older

who lives in an assisted living facility. Where appropriate in the context of these regulations, “resident” as used herein includes an authorized representative as defined in 63.223.

63.225 Resident Assessment - Evaluation of a resident’s physical, medical, and psychosocial status as documented in a Uniform Assessment Instrument (UAI), by a registered nurse.

63.226 Resident Assistant – Any unlicensed direct caregiver who, under the supervision of the assisted living director or director of health services, assists the resident with personal needs and monitors the activities of the resident while on the premises to ensure his/her health, safety, and well-being.

63.227 Secretary - Secretary of the Department of Health and Social Services.

63.228 Service Agreement - A written document developed with each resident which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and, if applicable, the expected outcome.

63.229 Shared Responsibility - The concept that residents and assisted living facilities share responsibility for planning and decision-making affecting the resident.

63.230 Significant Change - A major deterioration or improvement in a resident’s health status or ability to perform ADLs; a major alteration in behavior or mood resulting in ongoing problematic behavior or the elimination of that behavior on a sustained basis. Significant change does not include ordinary, day-to-day fluctuations in health status, functioning, and behavior, or a short-term illness such as a cold, unless these fluctuations continue to recur, nor does it include deterioration that will normally resolve without further intervention.

63.231 Social Services - Services provided to assist residents in maintaining or improving their ability to manage their everyday physical, mental and psychosocial needs.

63.232 Third-Party Provider - Any party, including a family member, other than the assisted living facility which furnishes services/supplies to a resident.

63.233 Uniform Assessment Instrument (“UAI”) - A document setting forth standardized criteria developed by the Division to assess each resident’s functional, cognitive, physical, medical, and psychosocial needs and status. The assisted living facility shall be required to use the UAI to evaluate each resident on both an initial and ongoing basis in accordance with these regulations.

### **SECTION 63.3 LICENSING REQUIREMENTS AND PROCEDURES**

63.301 No entity shall hold itself out as being an assisted living facility unless such entity has been duly licensed under these regulations and in accordance with state law. The Secretary or his/her designee shall issue a provisional or annual license for a specified number of beds.

63.302 Procedures for assisted living facility applications and for issuance, posting, and renewal of licenses shall be in accordance with 16 **Del.C.** Ch. 11, Subchapter I., Licensing By The State.

63.303 Inspections and monitoring shall be conducted in accordance with 16 **Del.C.** Ch. 11, Subchapter I., Licensing By The State.

63.304 Upon receipt of written notice of a violation of these regulations, the assisted living facility shall submit a written plan of action to correct deficiencies cited within 10 working days or such other time period as may be required by the Department. The plan of action shall address corrective actions to be taken and include all measures and completion dates to prevent their recurrence: 1) how the corrective action will be accomplished for those residents found to have been affected by the deficient practice; 2) how the facility will identify other residents having the potential to be affected by the same deficient practice; 3) what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur; and 4) how the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic changes.

63.305 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 **Del.C.**, Chapter 11, Subchapter I., Licensing By The State.

63.306 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 **Del.C.**, Ch. 11, Subchapter I., Licensing By The State.

63.307 Separate licenses are required for agencies maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds. Under conditions of assignment or transfer of ownership, a new license shall be required.

63.308 If a facility or part of a facility plans to close:

A. The assisted living facility shall notify representatives of the appropriate state agencies of the plan of closure at least 90 days before the planned closure.

B. The facility staff must notify each resident advising him/her of the action in progress at least 90 days before the planned closure.

C. The resident must be given the opportunity to designate a preference for a specific facility or for other arrangements.

D. The assisted living facility must arrange for the relocation to other facilities in the area in accordance with the residents' preference, if possible.

E. Any applicant for admission to the assisted living facility shall be advised of the planned closure date.

F. All residents' records and any medications

must accompany the residents to their new residences.

63.309 The Department may adopt, amend or repeal regulations governing the operation of the agencies defined in 16 **Del.C.**, Ch. 11, Subchapter I., Licensing By The State.

#### SECTION 63.4 GENERAL REQUIREMENTS

63.401 All written information provided by the assisted living facility shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws.

63.402 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with 16 **Del.C.**, Ch. 11, Subchapter I., Licensing By The State.

63.403 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.

63.404 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.

63.405 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.

63.406 The assisted living facility shall arrange for emergency transportation and care.

63.407 Inspection summaries and compliance history information shall be posted by the facility in accordance with 16 **Del.C.**, Chapter 11, Subchapter I., Licensing By The State.

63.408 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.

63.409 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:

A. Require care by a nurse that is more than intermittent or for more than a limited period of time;

B. Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;

C. Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;

D. Are bedridden for more than 14 days;

E. Have developed stage three or four skin ulcers;

F. Require a ventilator;

G. Require treatment for a disease or condition which requires more than contact isolation;

H. Have an unstable tracheotomy or have a stable tracheotomy of less than 6 months' duration;

I. Have an unstable peg tube;

J. Require an IV or central line;with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:

1. Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.

2. The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports.

3. The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;

K. Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;

L. Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and

M. Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.

63.410 The provisions of Section 63.409 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.

### **SECTION 63.5 RESIDENT WAIVERS**

63.501 An assisted living facility may request a resident-specific waiver so that it may serve a current resident who temporarily requires care otherwise excluded in section 63.409. A waiver request shall contain documentation by a physician stating that the resident's condition is expected to improve within 90 days.

63.502 The facility shall provide interim needed services by appropriate health care professionals while any waiver request is pending.

63.503 The assisted living facility shall submit in writing a request for a waiver, which shall include the following information:

A. An explanation of why the assisted living facility is seeking the waiver, to include physician documentation and a service agreement which details how staff will provide care;

B. An explanation of why denial of the waiver will impose a substantial hardship for the resident;

C. An explanation of why the waiver will not adversely affect the resident for whom the waiver is sought or other residents; and

D. The duration of the waiver, not to exceed 90 days for each incident or condition.

63.504 In evaluating a waiver request submitted under this regulation, the Department shall review the statements in the application and may:

A. Inspect the assisted living facility;

B. Confer with the Assisted Living Director or his/her designee;

C. Discuss the request with the resident to determine whether he/she believes a waiver is in his/her best interest; and/or

D. Review other waivers currently in place at the assisted living facility.

63.505 The Department shall issue a written decision on a waiver request submitted pursuant to these regulations within 5 business days of receipt of the request. If the Department grants the waiver, the written decision shall include the waiver's duration. If the Department denies the waiver, the written decision shall explain the reason(s) for the denial. The assisted living facility may submit a revised waiver request no later than five days after the receipt of the denial. While the second waiver request is pending, the facility shall provide needed services by health care professionals as outlined in the second waiver request.

63.506 If an assisted living facility violates any condition of a waiver, or if it appears to the Department that the health or safety of residents will be adversely affected by the continuation of a waiver, the Department may revoke it. The revocation may be appealed; however, discharge procedures in accordance with Regulation 906E. shall be commenced immediately.

### **SECTION 63.6 SPECIALIZED CARE FOR MEMORY IMPAIRMENT**

63.601 Any assisted living facility which offers to provide specialized care for residents with memory impairment shall be required to disclose its policies and procedures which describe the form of care or treatment provided, in addition to that care and treatment required by

the rules and regulations herein.

63.602 Said disclosure shall be made to the Department and to any person seeking specialized care for memory impairment in an assisted living facility.

63.603 The information disclosed shall explain the additional care that is provided in each of the following areas:

A. Philosophy: a written statement of the agency's overall philosophy and mission which reflects the needs of residents affected by memory impairment;

B. Resident Population: a description of the resident population to be served; the service agreement and its implementation;

C. Pre-Admission, Admission & Discharge: the process and criteria for placement, transfer or discharge from this specialized care;

D. Assessment, Care Planning & Implementation: the process used for assessment and establishing and updating the service agreement and its implementation,

E. Staffing Plan & Training Policies: staffing plan, orientation, and regular in-service education for specialized care;

F. Physical Environment: the physical environment and design features, including security systems, appropriate to support the functioning of adults with memory impairment;

G. Resident Activities: the frequency and types of resident activities;

H. Family Role in Care: the family involvement and family support programs;

I. Psychosocial Services: the process for addressing the mental health, behavior management, and social functioning needs of the resident;

J. Nutrition/Hydration: the frequency and types of nutrition and hydration services provided; and

K. Program Costs: the cost of care and any additional fees.

63.604 Any significant changes in the information provided by the assisted living facility shall be reported to the Department at the time the changes are made.

#### SECTION 63.7 MEDICATION MANAGEMENT

63.701 An assisted living facility shall establish and adhere to written medication policies and procedures which shall address:

A. Obtaining and refilling medication;

B. Storing and controlling medication;

C. Disposing of medication; and

D. Administration of medication, self-administration of medication, assistance with self-administration of medication, and medication management by an adult family member/support person.

E. Provision for a quarterly pharmacy review which shall include:

1. Assisting the facility with the development and implementation of medication-related policies and procedures;

2. Physical inspection of the medication storage areas;

3. Review of each resident's medication regimen with written reports noting any identified irregularities or areas of concern.

63.702 Each assisted living facility shall have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.

63.703 Medication stored by the assisted living facility shall be stored and controlled as follows:

A. Medication shall be stored in a locked container, cabinet, or area that is only accessible to authorized personnel;

B. Medication that is not in locked storage shall not be left unattended and shall not be accessible to unauthorized personnel;

C. Medication shall be stored in the original labeled container;

D. A bathroom or laundry room shall not be used for medication storage; and

E. All expired or discontinued medication, including those of deceased residents, shall be disposed of according to the assisted living facility's medication policies and procedures.

63.704 Residents who self-administer medication shall be provided with a locked container.

63.705 A separate medication log must be maintained for each resident documenting administration of medication by staff and staff assistance with self-administration.

63.706 Within 30 days after a resident's admission and concurrent with all UAI-based assessments, the assisted living facility shall arrange for an on-site review by an RN of the resident's medication regime if he or she self-administers medication. The purpose of the on-site review is to assess the resident's cognitive and physical ability to self-administer medication or the need for assistance with or staff administration of medication.

63.707 The assisted living facility shall ensure that the review required by section 63.706 is documented in the resident's records, including any recommendations given by the reviewer.

63.708 Concurrently with all UAI-based assessments, the assisted living facility shall arrange for an on-site medication review by a registered nurse, for residents who need assistance with self-administration or staff administration of medication, to ensure that:

A. Medications are properly labeled, stored and maintained;

B. Each resident receives the medications that have been specifically prescribed in the manner that has been ordered;

C. The desired effect of each medication is achieved, and if not, that the appropriate authorized prescriber is so informed;

D. Any undesired side effects, adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber; and

E. Any unresolved discrepancy of controlled substances shall be reported to the Delaware Office of Narcotics and Dangerous Drugs.

63.709 Records shall be kept on file at the facility for those who have completed the AWSAM course which is required by 24 Del.C., Chapter 19 for those who assist the residents with self-administration of medication.

63.710 Each assisted living facility shall complete an annual AWSAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to the Delaware Nurse Practice Act, 24 Del.C., Chapter 19.

### **SECTION 63.8 INFECTION CONTROL**

63.801 The assisted living facility shall establish written procedures to be followed in the event that a resident with a communicable disease is admitted or an episode of communicable disease occurs. It is the responsibility of the assisted living facility to see that:

A. The necessary precautions stated in the written procedures are followed; and

B. All rules of the Delaware Division of Public Health are followed so there is minimal danger of transmission to staff and residents.

63.802 Any resident found to have active tuberculosis in an infectious stage may not continue to reside in an assisted living facility.

63.803 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate isolation or precaution as recommended for that disease by the Centers for Disease Control. Those with a communicable disease which has been determined by the Director of the Division of Public Health to be a health hazard to visitors, staff, and other residents shall be placed on isolation care until they can be moved to an appropriate room or transferred.

63.804 The admission or occurrence of a resident with a notifiable disease within an assisted living facility shall be reported to the County Public Health Administrator. See Appendix A.

63.805 The assisted living facility shall have on file results of tuberculin tests:

- 1) performed annually for all employees and
- 2) performed on all newly admitted residents.

The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be

reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

63.806 The assisted living facility shall have on file evidence of annual vaccination against influenza for all residents, as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against influenza must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.807 The assisted living facility shall have on file evidence of vaccination against pneumococcal pneumonia for all residents older than 65 years and as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against pneumococcal pneumonia must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.808 The assisted living facility shall have policies and procedures for infection control as it pertains to staff, residents, and visitors.

63.809 All assisted living facility staff shall be required to use Standard Precautions.

### **SECTION 63.9 RESIDENT APPLICATIONS AND CONTRACTS**

63.901 The assisted living facility shall have a written application process and provide clear reasons in writing if an applicant is rejected.

63.902 The assisted living facility shall recommend review of the contract by an attorney or other representative chosen by the resident.

63.903 Prior to executing the contract, each assisted living facility shall provide to the prospective resident a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the resident during the period of occupancy.

63.904 The resident shall sign a contract within 3 business days after admission that:

- A. Is a clear and complete reflection of commitments agreed to by the parties and the actual practices that will occur in the assisted living program;
- B. Is accurate, precise, legible, and written in plain language; and
- C. Conforms to all relevant state and local laws and regulations.

63.905 The assisted living facility shall retain the contract on-site and make it available for review by the Department or its designee. The facility shall also provide a

copy to the resident.

63.906 The contract or service agreement shall include, at a minimum, the following non-financial provisions:

A. A listing of basic and optional services provided by the assisted living facility including the availability of licensed nursing staff;

B. A listing of optional services that may be provided by third parties;

C. A statement of the resident's rights, as set forth in 16 Del.C. Chapter 11, Subchapter II and an explanation of the assisted living facility's grievance procedures;

D. Occupancy provisions, including:

1. Policies regarding bed and room assignment, including the specific room and bed assigned to the resident at the time of admission;

2. Policies regarding residents modifying their living area;

3. Procedures to be followed when the assisted living facility temporarily or permanently changes the resident's accommodation by:

a. Relocating the resident within the facility;

b. Making a change in roommate assignment; and

c. Increasing or decreasing the number of individuals occupying a room.

4. Procedures to be followed in transferring the resident to another facility;

5. Security procedures which the licensee shall implement to protect the resident and the resident's property;

6. The staff's right to enter a resident's room;

7. The resident's rights and obligations concerning use of the facility, including common areas;

8. The assisted living facility's policy in case of unavoidable or optional absences such as hospitalizations, recuperative stays in other settings, or vacation, and payment terms;

9. Provisions for interim service in the event of an emergency; and

10. An acknowledgment that the resident has reviewed all assisted living facility rules, requirements, restrictions, or special conditions that the facility will impose on the resident.

E. Discharge/temporary absence policies and procedures, including:

1. Those actions, circumstances, or conditions that temporarily disqualify individuals from continued residence in the assisted living facility or may result in the resident's discharge from the facility;

2. The procedures which the assisted living facility shall follow if it intends to discharge a resident and thereby terminate the contract, including a provision under

which the assisted living facility shall give at least 30 days notice to the resident before the effective date of the discharge and termination of the contract, except in the case of a health emergency or substantial risk to the health and safety of the other residents or facility staff;

3. The procedures which the resident shall follow if the resident wishes to terminate the contract, including a provision that the resident, or appropriate representative, shall give at least 30 days notice to the assisted living facility before the effective date of the termination, except in the case of a health emergency;

4. The procedures which the assisted living facility shall follow in helping the resident find an appropriate placement;

5. In a living unit in which more than one resident is the contracting party, the terms under which the contract may be modified in the event of one of the resident's discharge or death, including the provisions for termination of the contract and appropriate refunds.

F. Obligations of the facility and the resident as to:

1. Arranging for or overseeing medical care; and

2. Monitoring of the status of the resident.

G. The assisted living facility's formal internal grievance process which shall protect residents from reprisal by the facility or its employees.

H. An inventory of the resident's personal belongings, if the resident so desires.

63.907 The contract shall include, at a minimum, the following financial provisions:

A. Party responsible for:

1. Handling the finances of the resident;

2. Purchasing or renting essential or desired equipment and supplies;

3. Arranging and contracting for services not covered by the contract;

4. Ascertaining the cost of and purchasing durable medical equipment; and

5. Disposing of the resident's property upon discharge or death of the resident.

B. Rate structure and payment provisions including:

1. All rates to be charged to the resident, including, but not limited to:

a. Service packages;

b. Fee for service rates; and

c. Other ancillary charges.

2. Notification of the rate structure and the criteria to be used for imposing additional charges for the provision of additional services, if the resident's service and care needs change;

3. Identification of the persons responsible for payment of all fees and charges and a clear indication of

whether the person's responsibility is or is not limited to the extent of the resident's funds;

4. A provision which provides at least 60 days notice of any rate increase, except if necessitated by a change in the resident's medical condition;

5. Billing, payment, and credit policies, including the procedures that the assisted living facility will follow in the event the resident can no longer pay for services provided or for services or care needed by the resident; and

6. A description of any prepaid fees or charges and the terms governing refund of those fees or charges in the event of a resident's discharge from the assisted living facility or termination of the contract.

63.908 The contract shall be amended by the parties to reflect any applicable increase or decrease in charges.

63.909 All notices to be provided pursuant to an assisted living contract shall be in writing and mailed or hand-delivered to the resident.

63.910 No contract shall be signed before a full assessment of the resident has been completed and a service agreement has been executed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

#### **SECTION 63.10 RESIDENT ASSESSMENT**

63.1001 Each assisted living facility shall use a Uniform Assessment Instrument (UAI) developed by the Division. The UAI shall be used in conducting all resident assessments.

63.1002 A resident seeking entrance shall have an initial UAI-based resident assessment completed by a registered nurse (RN) acting on behalf of the assisted living facility no more than 30 days prior to admission. In all cases, the assessment shall be completed prior to admission. Such assessment shall be reviewed by an RN within 30 days after admission and, if appropriate, revised. If the resident requires specialized medical, therapeutic, nursing services, or assistive technology, that component of the assessment must be performed by personnel qualified in that specialty area.

63.1003 Within 30 days prior to admission, a prospective resident shall have a medical evaluation completed by a physician.

63.1004 The resident assessment shall be completed in conjunction with the resident.

63.1005 The UAI, developed by the Department, shall be used to update the resident assessment. At a minimum, regular updates must occur 30 days after admission, annually and when there is a significant change in the resident's condition.

63.1006 If the needs of a resident exceed the care which the assisted living facility can provide and a waiver has not

been requested, the facility shall assist the resident in making arrangements for an appropriate transfer within 30 days. While a transfer is pending, the assisted living facility shall coordinate the provision of services needed by the resident.

63.1007 The assisted living facility shall provide an instrument to assess interests, strengths, talents, skills and preferences of each resident within 30 days of admission to be used in activity planning.

#### **SECTION 63.11 SERVICES**

63.1101 The assisted living facility shall ensure that:

A. Three meals, snacks and prescribed food supplements are available during each 24-hour period, 7 days per week;

B. Meals and snacks are varied, palatable, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the special dietary needs of each resident;

C. Food service complies with the Delaware Food Code; and

D. A resident who chooses not to follow prescribed dietary recommendations shall be provided documented counseling on potential adverse outcomes.

63.1102 As part of the licensure approval and renewal process, an assisted living applicant or licensee shall submit at least a 4-week menu cycle with documentation by a dietician or nutritionist that the menus are nutritionally adequate. Thereafter, menus are to be written at least one week in advance and maintained on file, as served, for two months.

63.1103 The assisted living facility shall ensure that the resident's service agreement is being properly implemented.

63.1104 In accordance with the service agreement, the assisted living facility shall provide or ensure the provision of all necessary personal services, including all activities of daily living, and shall ensure that personal care supplies are available.

63.1105 The assisted living facility shall ensure that laundry and housekeeping services are offered and that all areas of the facility are maintained in a clean and orderly condition.

63.1106 In accordance with the service agreement, the assisted living facility shall be responsible for facilitating access to appropriate health care and social services for the resident.

63.1107 The assisted living facility shall assess each resident and provide or arrange appropriate opportunities for social interaction and leisure activities which promote the physical and mental well-being of each resident, including facilitating access to spiritual activities consistent with the preferences and background of the resident.

#### **SECTION 63.12 SERVICE AGREEMENTS**

63.1201 A service agreement based on the needs

identified in the UAI shall be completed prior to or no later than the day of admission. The resident shall participate in the development of the agreement. The resident and the facility shall sign the agreement and each shall receive a copy of the signed agreement. All persons who sign the agreement must be able to comprehend and perform their obligations under the agreement.

63.1202 The service agreement or contract shall address the physical, medical, and psychosocial services that the resident requires as follows:

- A. Assistance with activities of daily living and instrumental activities of daily living;
- B. Services provided by licensed nurses;
- C. Food, nutrition, and hydration services;
- D. Environmental services including housekeeping, laundry, safety, trash removal;
- E. Psychosocial/emotional services including those related to memory impairment and other cognitive deficits;
- F. Banking, record keeping, and personal spending services;
- G. Transportation services;
- H. Individual living unit furnishings;
- I. Notification procedures when an incident occurs or there is a change in the health status of the resident;
- J. Assistive technology and durable medical equipment;
- K. Rehabilitation services;
- L. Qualified interpreters for people who have a hearing impairment or do not speak English; and
- M. Reasonable accommodations for persons with disabilities as defined by applicable state and federal law.

63.1203 The resident's personal attending physician(s) shall be identified in the service agreement by name, address, and telephone number.

63.1204 The facility shall be responsible for appropriate documentation in the service agreement for services provided or arranged by the facility.

63.1205 The service agreement shall be developed and followed for each resident consistent with that person's unique physical and psychosocial needs with recognition of his/her capabilities and preferences.

63.1206 The service agreement shall be reviewed when the needs of the resident have changed and, minimally, in conjunction with each UAI. Within 10 days of such assessment, the resident and the assisted living facility shall execute a revised service agreement, if indicated.

63.1207 The service agreement shall be based on the concepts of shared responsibility and resident choice. To participate fully in shared responsibility, residents shall be provided with clear and understandable information about the possible consequences of their decision-making. If a resident's preference or decision places the resident or others at risk or is likely to lead to adverse consequences, a

managed/negotiated risk agreement section may be included in the service agreement.

63.1208 The following are criteria for a managed/negotiated risk agreement:

A. The risks are tolerable to all parties participating in the development of the managed/negotiated risk agreement;

B. Mutually agreeable action is negotiated to provide the greatest amount of resident autonomy with the least amount of risk; and

C. The resident living in the facility is capable of making choices and decisions and understanding consequences.

63.1209 If a managed/negotiated risk agreement is made a part of the service agreement, it shall:

A. Clearly describe the problem, issue or service that is the subject of the managed/negotiated risk agreement;

B. Describe the choices available to the resident as well as the risks and benefits associated with each choice, the assisted living facility's recommendations or desired outcome, and the resident's desired preference;

C. Indicate the agreed-upon option;

D. Describe the agreed upon responsibilities of the assisted living facility, the resident, and any third parties;

E. Become a part of the service agreement, be signed separately by the resident, the assisted living facility, and any third party with obligations under the managed/negotiated risk agreement that the third party is able to fully comprehend and perform; and

F. Include a time frame for review.

63.1210 The assisted living facility shall have sufficient staff to meet its responsibilities under the managed/negotiated risk agreement.

63.1211 The assisted living facility shall not use managed/negotiated risk agreements to provide care to residents with needs beyond the capability of the facility. A managed/negotiated risk agreement shall not be used to supersede any requirements of these regulations.

63.1212 The assisted living facility shall make no attempt to use the managed/negotiated risk portion of the service agreement to abridge a resident's rights or to avoid liability for harm caused to a resident by the negligence of the assisted living facility and any such abridgement or disclaimer shall be void.

### SECTION 63.13 RESIDENT RIGHTS

63.1301 Assisted living facilities are required by 16 Del.C. Chapter 11, Subchapter II, to comply with the provisions of the Rights of Patients covered therein.

63.1302 Each resident has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the resident.

### SECTION 63.14 QUALITY ASSURANCE

63.1401 The assisted living facility shall develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

63.1402 On at least a semi-annual basis, the assisted living facility shall survey each resident regarding his/her satisfaction with services provided.

A. The assisted living facility shall retain all surveys for at least two years which shall be reviewed during inspection.

B. The assisted living facility shall maintain documentation for at least one year which addresses what actions were taken as a result of the surveys.

### **SECTION 63.15 STAFFING**

63.1501 As used herein "staff" includes permanent employees of the assisted living facility and independent contractors, including "temps."

63.1502 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the residents shall be employed and shall comply with applicable state laws and regulations.

63.1503 All direct care staff shall be familiar with the service agreement for each resident for whom they provide care.

63.1504 Every assisted living facility shall have a Director. Facilities licensed for 25 beds or more shall have a full-time Nursing Home Administrator. Facilities licensed for 5 through 24 beds shall have a part-time Nursing Home Administrator on-site and on-duty at least 20 hours a week. If the assisted living facility is part of a continuing care retirement community (CCRC) or part of a campus under the same ownership, the CCRC or campus may operate under one licensed Nursing Home Administrator.

63.1505 The Nursing Home Administrator shall comply with the provisions of 24 **Del.C.**, Chapter 52, and the Board's Rules and Regulations.

63.1506 The Director/Nursing Home Administrator shall have overall responsibility for managing the assisted living facility such that all requirements of state law and regulations are met.

63.1507 The Director of a facility for 4 beds or fewer shall meet one of the following criteria:

A. A baccalaureate degree in a health or social services field or business administration; or

B. An associates degree in a health or social services field or business administration and at least 2 years of full-time equivalent work experience in these disciplines; or

C. An RN with a combined total of 4 years full-time equivalent education and related work experience; or

D. At least 4 years full-time equivalent work experience as an LPN, or 5 years full-time equivalent work

experience in a health or social services field or business administration.

63.1508 The Director of a Facility for 4 beds or fewer shall be on-site at least 8 hours a week.

63.1509 Each facility for 4 beds or fewer shall have a full-time, on-site house manager who shall at a minimum:

A. Possess a high school diploma or its equivalent;

B. Be certified as a CNA with at least three years experience providing care in a health care setting;

C. Complete an orientation program in accordance with the CNA regulations; and

D. Receive, at a minimum, 12 hours of regular in-service education annually, which may include but not be limited to the topics listed below:

1. The health and psychosocial needs of the population being served;

2. The resident assessment process;

3. Use of service agreements;

4. Cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;

5. Providing assistance with ambulation, personal hygiene, dressing, toileting, and feeding;

6. 16 **Del.C.**, Chapter 11, pertaining to resident's rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;

7. Fire and life safety, and emergency disaster plans;

8. Infection control, including Standard Precautions;

9. Basic food safety;

10. Basic first aid, CPR, and the Heimlich Maneuver; and

11. Hospice services.

63.1510 Assisted living facilities administering therapies and/or treatments shall have staff adequate in number and appropriately qualified and/or licensed.

63.1511 Every assisted living facility shall have a Director of Nursing who is a registered nurse. Facilities licensed for 25 assisted living beds or more shall have a full-time Director of Nursing. Facilities licensed for 5 through 24 assisted living beds shall have a part-time Director of Nursing on-site and on-duty at least 20 hours a week. The nursing director of a facility for 4 assisted living beds or fewer shall be on-site at least 8 hours a week.

63.1512 The Director of Nursing shall comply with the provisions of 24 **Del.C.** Ch. 19 and the rules and regulations of the Board of Nursing.

63.1513 The Director of Nursing shall have overall responsibility for the coordination, supervision and provision of the nursing department /services.

63.1514 Assisted living facility resident assistants shall, at a minimum:

A. Be at least 18 years old;

B. Participate in a facility-specific orientation program that covers the following topics:

1. Fire and life safety, and emergency disaster plans;
2. Infection control, including Standard Precautions;
3. Basic food safety;
4. Basic first aid and the Heimlich Maneuver;
5. Job responsibilities;
6. The health and psychosocial needs of the population being served;
7. The resident assessment process; and
8. The use of service agreements;
9. 16 Del.C., Chapter 11, pertaining to residents' rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;
10. Hospice services.

C. Receive, at a minimum, 12 hours of regular in-service education annually which may include but not be limited to the topics listed in 63.1514 B;

D. Receive training to competently assist in activities of daily living or provide documentation of such training, and

E. Complete a Delaware Board of Nursing-approved AWSAM training course if assisting with self-administration of medications.

63.1515 The assisted living facility shall have a staffing plan which shall specify supervisory responsibilities, including the person responsible in the Assisted Living Director's absence.

63.1516 The assisted living facility shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.1517 The assisted living facility shall maintain a copy of each employee's signature and handwritten initials.

63.1518 The assisted living facility shall maintain records of each employee's regular in-service education hours.

63.1519 The assisted living facility shall provide orientation training to all new staff.

63.1520 Temporary agency staff placed in a facility in which they have not worked within the past 6 months shall undergo an orientation prior to beginning their first shift. The orientation shall cover the following topics:

- A. Tour of the facility;
- B. Fire and disaster plans;
- C. Emergency equipment and supplies;
- D. Communication and documentation requirements of the facility;
- E. Process for reporting emergencies and change of condition; and
- F. Review of current assigned resident issues/needs.

63.1521 All personnel records for permanent employees, including employment applications, shall be maintained for a minimum of five years consistent with the assisted living facility policies and applicable state laws.

63.1522 At a minimum, every assisted living facility shall have an awake staff person on-site 24 hours per day who is qualified to administer or assist with self-administration of medication ("AWSAM") and who has knowledge of emergency procedures, basic first aid, CPR, and the Heimlich Maneuver.

63.1523 Written policies and procedures shall be required and adhered to for any assisted living facility utilizing volunteers.

## SECTION 63.16 ENVIRONMENT AND PHYSICAL PLANT

63.1601 Each assisted living facility shall comply with applicable federal, state and local laws including:

- A. Rehabilitation Act, Section 504;
- B. Fair Housing Act as amended; and
- C. Americans with Disabilities Act.

63.1602 Assisted living facilities shall:

- A. Be in good repair;
- B. Be clean;
- C. Have a hazard-free environment; and
- D. Have an effective pest control program.

63.1603 Heating and cooling systems in common areas shall be maintained at a temperature between 71° F and 81° F. A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort.

63.1604 Common areas shall be lighted to assure resident safety.

63.1605 For all new construction and conversions of assisted living facilities with more than 10 beds, there shall be at least 100 square feet of floor space, excluding alcoves, closets, and bathroom, for each resident in a private bedroom and at least 80 square feet of floor space for each resident sharing a bedroom.

A. Sharing of a bedroom shall be limited to 2 residents;

B. Each facility shall have locked storage available for the resident's valuables, in accordance with the facility's policies;

C. Bedrooms and all bathrooms used by residents in assisted living facilities, except in specialized care units for memory impairment, shall be equipped with an intercom or other mechanical means of communication for resident emergencies. For specialized care units for memory impairment, staff must be equipped to communicate resident emergencies immediately.

63.1606 Resident kitchens shall be available to residents either in their individual living unit or in an area readily accessible to each resident. Residents shall have

access to a microwave or stove/conventional oven, refrigerator, and sink. The assisted living facility shall establish and adhere to policies and procedures to ensure that common kitchens are used and maintained in such a way as to provide:

- A. A clean and sanitary environment;
- B. Safe storage of food; and
- C. A means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.1607 Bathroom facilities shall be available to residents either in their individual living units or in an area readily accessible to each resident. There shall be at least 1 working toilet, sink, and tub/shower for every 4 residents.

63.1608 Hot water at resident bathing and hand-washing facilities shall not exceed 120 degrees Fahrenheit.

**63.1609 An assisted living facility shall have a functioning emergency generator adequate to supply power in the event that the normal electrical supply is interrupted. The required emergency generating system shall conform to NFPA 99 Life Safety Code and NFPA 101 Life Safety Code.**

**63.1610 The emergency generator shall supply power for the following:**

**A. Illumination of means of egress in stairs, facility vestibules, aisles, corridors and ramps leading to an exit. Illumination shall not be less than one foot candle.**

**B. Illumination of exit signs and exit directional signs. Illumination shall not be less than one foot candle.**

**C. Fire detection, fire alarm and fire extinguishing systems.**

**D. Communication systems including telephones, public address system and nurse call or resident intercom system.**

**E. Lighting in dining and recreation areas to provide illumination to exit ways. Illumination shall not be less than 5 foot candles.**

**F. Elevator cab lighting, control, communication and signal systems including the capacity to operate the elevator to release passengers trapped between floors.**

**G. Task illumination and at least one electrical receptacle in each area listed below. The cover plate on such receptacles shall have a distinctive color or marking.**

- 1. Medication dispensing areas.**
- 2. Direct care charting areas.**
- 3. Resident rooms.**
- 4. Kitchen.**

**H. Refrigeration units, kitchen hood and/or exhaust systems.**

**I. Sump pump.**

**J. Heating/air conditioning, sufficient to**

**prevent resident distress, in corridors, common areas and any selected room(s) designated for congregate use during a power outage.]**

### **SECTION 63.17 FIRE SAFETY AND OTHER EMERGENCY PLANS**

63.1701 The assisted living facility shall comply with all applicable state and local fire and building codes. All applications for license or renewal of license shall include a letter certifying compliance by the Fire Marshal having jurisdiction. Notification by the Fire Marshal of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for enforcement remedies in 16 Del.C., Chapter 11, Subchapter I, Licensing By The State.

63.1702 The assisted living facility shall:

A. Develop and implement through staff training and drills a plan for use in fire and other emergencies, which clearly outlines the procedures to be followed and the responsibilities designated to staff.

63.1703 Develop a plan for relocation and/or evacuation and continuous provision of services to residents in the event of permanent or temporary closure of the assisted living facility. The evacuation plan shall be approved by the Fire Marshal having jurisdiction and shall include the evacuation route, which shall be conspicuously posted on each floor and in each unit.

63.1704 The assisted living facility shall promote staff knowledge of fire and other emergency safety by:

A. Orienting staff to the emergency plan and to individual responsibilities within 24 hours of the commencement of job duties;

B. Documenting completion of orientation in staff member's personnel file with employee's signature;

C. Conducting facility fire drills in accordance with State of Delaware Fire Prevention Regulations;

D. Conducting other facility emergency drills or training sessions on all shifts at least annually; and

E. Maintaining records for two years of facility fire and other emergency drills/training sessions.

63.1705 The assisted living facility shall promote resident fire and other emergency safety by:

A. Orienting residents to the emergency plan within 24 hours of their admission into the assisted living facility;

B. Documenting the orientation such that it is signed and dated by the resident; and

C. Maintaining records identifying residents needing assistance for evacuation.

### **SECTION 63.18 RECORDS AND REPORTS**

63.1801 The assisted living facility shall be responsible for maintaining appropriate records for each resident. These records shall document the implementation of the service

agreement for each resident.

63.1802 Records shall be available, along with the equipment to read them if electronically maintained, at all times to legally authorized persons; otherwise such records shall be held confidential.

63.1803 The assisted living facility resident clinical records shall be retained for a minimum of 5 years following discharge before being destroyed.

63.1804 In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures shall be acceptable. In cases when such attestation is done on computer records, safeguards to prevent unauthorized access and reconstruction of information must be in place. The following is an example of how such a system may be set up:

A. There is a written policy, at the assisted living facility, describing the attestation policy(ies) in force at the facility;

B. The computer has built-in safeguards to minimize the possibility of fraud;

C. Each person responsible for an attestation has an individualized identifier;

D. The date and time is recorded from the computer's internal clock at the time of entry;

E. An entry is not to be changed after it has been recorded; and

F. The computer program controls what sections/areas any individual can access/enter data based on the individual's personal identifier.

63.1805 Incident reports, with adequate documentation, shall be completed for each incident. Records of incident reports shall be retained in facility files for the following:

A. All reportable incidents.

B. Falls without injury and falls with injuries that do not require transfer to an acute care facility or do not require reassessment of the resident.

C. Errors or omissions in treatment or medication.

D. Injuries of unknown source.

E. Lost items, in accordance with facility policy, which are not subject to financial exploitation. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses and any accused persons; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.

~~63.1806 Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated reported-immediately, which shall be within 8 hours of the occurrence of the incident, to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; telephone number: 1-877-453-0012;~~

fax number: 1-877-264-8516. The immediate reporting of reportable incidents shall be by oral communication, for which a fax may be substituted, followed within 48 hours by a written report on a form provided by the Division.

63.1807 Reportable incidents include:

A. Abuse as defined in 16 Del.C. §1131.

1. Physical abuse.

a. Staff to resident with or without injury.

b. Resident to resident with or without injury.

c. Other (e.g., visitor, relative) to resident with or without injury.

2. Sexual abuse.

a. Staff to resident sexual acts.

b. Resident to resident non-consensual sexual acts.

c. Other (e.g., visitor, relative) to resident non-consensual sexual acts.

3. Emotional abuse.

a. Staff to resident.

b. Resident to resident.

c. Other (e.g., visitor, relative) to resident.

B. Neglect as defined in 16 Del.C. §1131.

C. Mistreatment as defined in 16 Del.C. §1131.

D. Financial exploitation as defined in 16 Del.C. §1131.

E. Resident elopement.

1. Any circumstance in which a resident's whereabouts are unknown to staff and the resident suffers harm.

2. Any circumstance in which a cognitively impaired resident, whose whereabouts are unknown to staff, exits the facility.

3. Any circumstance in which a resident cannot be found inside or outside a facility and the police are summoned.

F. Death of a resident in a facility or within 5 days of transfer to an acute care facility.

G. Significant injuries.

1. Injury from an incident of unknown source in which the initial investigation concludes that there is reasonable suspicion that the injury was caused by abuse, neglect or mistreatment.

2. Injury from a fall which results in transfer to an acute care facility for treatment or evaluation or which requires periodic reassessment of the resident's clinical status by facility professional staff for up to 48 hours.

3. Injury sustained while a resident is physically restrained.

4. Injury sustained by a resident dependent on staff for toileting, mobility, transfer and/or bathing.

5. Significant error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident's health and safety or requires extensive monitoring for up to 48 hours.

6. A burn greater than first degree.

7. Choking resulting in transfer to an acute care facility.

8. Areas of contusions or lacerations which may be attributable to abuse or neglect.

9. Serious unusual and/or life-threatening injury.

H. Attempted suicide.

I. Poisoning.

J. Epidemic outbreak or quarantine.

K. Fire within a facility due to any cause.

L. Utility interruption lasting more than 8 hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephone system.

M. Structural damage or unsafe structural conditions.

1. Structural damage to a facility due to natural disasters such as hurricanes, tornadoes, flooding or earthquakes.

2. Water damage which impacts resident health, safety or comfort.

**SECTION 63.19 WAIVERS AND SEVERABILITY**

63.1901 Waivers may be granted by the Division for good cause.

63.1902 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

**See 6 DE Reg. 525 (10/1/02)**

**APPENDIX A  
Notifiable Diseases**

- Acquired Immune Deficiency Syndrome (S)
- Anthrax (T)
- Botulism (T)
- Brucellosis
- Campylobacteriosis
- Chancroid (S)
- Chlamydia trachomatis infections (S) g
- Cholera
- Cryptosporidiosis
- Cyclosporidiosis
- Diphtheria (T)
- E. Coli 0157:H7 infection (T)
- Encephalitis

- Ehrlichiosis
- Foodborne Disease Outbreaks (T)
- Giardiasis
- Gonococcal infections (S)
- Granuloma Inguinale (S)
- Hansen's Disease (Leprosy)
- Hantavirus infection (T)
- Hemolytic uremic syndrome (HUS)
- Hepatitis A (T)
- Hepatitis B (S)
- Hepatitis C & unspecified
- Herpes (congenital) (S)
- Herpes (genital) (N)
- Histoplasmosis
- Human Immunodeficiency Virus (HIV) (N)
- Human papillomavirus (genital warts) (N)
- Influenza (N)
- Lead Poisoning
- Legionnaires Disease
- Leptospirosis
- Lyme Disease
- Lymphogranuloma Venereum (S)
- Malaria
- Measles (T)
- Meningitis (all types other than meningococcal)
- Meningococcal infections (all types) (T)
- Mumps (T)
- Pelvic Inflammatory Disease (resulting from onococcal and/or chlamydial infections) (S)
- Pertussis (T)
- Plague (T)
- Poliomyelitis (T)
- Psittacosis
- Rabies (man, animal) (T)
- Reye's Syndrome
- Rocky Mountain Spotted Fever
- Rubella (T)
- Rubella (congenital)(T)
- Salmonellosis
- Shigellosis
- Smallpox (T)
- Streptococcal disease (invasive group A)
- Streptococcal toxic shock syndrome (STSS)
- Syphilis (S)
- Syphilis (congenital) (T)
- Tetanus
- Toxic Shock Syndrome
- Trichinosis
- Tuberculosis
- Tularemia
- Typhoid Fever (T)
- Vaccine Adverse Reactions
- Varicella
- Waterborne Disease Outbreaks (T)

Yellow Fever (T)

Also, any unusual disease and adverse reaction to vaccine

County Health Offices:

New Castle County	995-8632
Kent County	739-5305
Sussex County	856-5355

(T) report by rapid means

(N) report in number only when so requested

For all diseases not marked by (T) or (N):

(S) – sexually transmitted disease, report required in 1 day

Others – report required in 2 days

**See 6 DE Reg. 525 (10/1/02)**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,

Section 122(1) and (3)h and

29 Delaware Code, Section 7904

(16 Del.C. §122(1)(3)h, 29 Del.C. §7904)

### **ORDER**

#### **Regulations Pertaining to the Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders**

#### **NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt State of Delaware Regulations Pertaining to the Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Del.C. Ch. 101 and authority as prescribed by 16 Del.C. §122 (1), (3)h and 29 Del.C. §7904.

On April 1, 2004 (Volume 7, Issue 10), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 2004, or be presented at a public hearing on April 22, 2004, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

#### **FINDINGS OF FACT**

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include minor modifications from those published in the April 1, 2004, Register of Regulations, based on comments received during the public comment period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Pertaining to the Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders are adopted and shall become effective July 10, 2004, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi,

Secretary, Department of Health and Social Services

Date of Signature 6.15.2004

#### **SUMMARY OF EVIDENCE**

A public hearing was held on April 22, 2004, at 1:00 p.m. in the Third Floor Conference Room of the Jesse Cooper Building located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer. The purpose of the hearing was to discuss the proposed amendments to the Department of Health and Social Services (DHSS) Regulations Pertaining to the Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders. Announcements regarding the public hearing were published in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. JoAnn Baker from Community Health Care Access (CHCA) Section of the Division of Public Health (DPH) made the agency’s presentation. Although there was no testimony given at the hearing, three letters were received commenting on the proposed Regulations. All comments were received during the public comment period (April 1 through April 30, 2004). Organizations that commented included:

- **Delaware Developmental Disabilities Council**
- **State Council for Persons with Disabilities**
- **Governor’s Advisory Council for Exceptional Citizens**

Public comments and the DHSS (Agency) responses are as follows:

- **The regulations generally contain inconsistent references to “parents” and “parents or guardians”.**

*Agency Response:* After a careful review, amendments were made throughout the regulations to correct this problem.

- **The definition of “IMF” in Section 1.0 is difficult to follow. Perhaps the italicized language was meant to be deleted.**

*Agency Response:* Based on this comment, the italicized language was removed from the definition of “IMF” in Section 1.0 for purposes of clarity.

- **Section 7.0 of the regulation contemplates that the parents will receive a copy of the test results only upon request. We strongly recommend that the reference be amended to affirmatively require disclosure of positive test results to the parents. If the screening is indicative of a covered disorder, the parent should be promptly informed, preferably by the primary health care provider or, in the absence of such a provider, by some other entity.**

*Agency Response:* Based on this comment, Section 7.0 was amended to reflect the Newborn Screening Program’s process to ensure affirmative disclosure of positive test results to the parents or legal guardians.

- **The affidavit in Section 10.0 contains some ostensibly odd representations. For example, the parents are essentially required to affirm that they have an “unorthodox” belief in God. The Agency may wish to reassess the text of this affidavit.**

*Agency Response:* Based on this comment the Agency reviewed the affidavit in question. Although the language used may seem “ostensibly odd”, it is intended to recognize the many culturally diverse belief systems that are represented in the United States. The affidavit has also been reviewed by the Agency’s Deputy Attorney General and has been found to be legally sufficient.

- **There was a general comment that the Newborn Screening Program screen for more genetic diseases.**

*Agency Response:* Currently, Delaware’s Newborn Screening Program screens for 30 disorders, the majority of which are considered genetic disorders. In deciding what disorders to screen for, the Agency considers the recommended March of Dimes list of disorders and geographic prevalence data. As a result of this comment,

The Newborn Screening Program will make direct contact with commenting organizations to clarify and consider their screening recommendations.

In addition to the changes made above, grammatical corrections were made to the regulation for purposes of clarity.

The public comment period was open from April 1, 2004 to April 30, 2004.

Verifying documents are attached to the Hearing Officer’s record. The regulation has been approved by the Delaware Attorney General’s office and the Cabinet Secretary of DHSS.

**REGULATIONS PERTAINING TO THE  
TESTING OF NEWBORNS FOR HEREDITARY  
DISORDERS  
STATE OF DELAWARE  
~~State Board of Health Regulations adopted July 14, 1994.~~  
REGULATIONS PERTAINING TO THE TESTING  
OF NEWBORNS  
FOR HEREDITARY DISORDERS**

~~Under the Authority granted to the State Board of Health under 16 Del.C. sec. 122 (1), 16 Del.C. sec. 122 (3) (h), and 29 Del.C. sec. 7904 the Board of Health of the State of Delaware hereby adopts the following regulations pertaining to the testing of newborns for hereditary disorders.~~

~~The Committee on Genetics of the American Academy of Pediatrics recognizes that newborn screening is a preventive public health procedure which should be available to all neonates. Newborn screening programs have proven to be one of our most valuable tools for preventing mental retardation.~~

~~**PURPOSE:** These regulations describe the Newborn Screening Program administered by the Delaware Division of Public Health. Under the authorization of the statutes listed above, each newborn delivered in the state must be provided a panel of screening tests to identify the newborn that may be at risk of having phenylketonuria, certain other heritable diseases or congenital hypothyroidism.~~

~~These regulations clarify responsibilities among the parties involved, and will bring the Delaware Newborn Screening Program into step with Newborn Screening System Guidelines published by the Council of Regional Genetics Networks. Vermont and Delaware are the only states that have no regulation or legislation on newborn screening. These regulations will increase the effectiveness of the Newborn Screening Program.~~

~~These regulations apply to each newborn child in the State, and the responsibility for implementation of the regulations rests with the institution in which the child is born, or, if a child is born outside an institution, with the~~

person required to prepare and file the certificate of birth and with the newborn's primary care provider.

### **SECTION I DEFINITIONS**

1. "~~Blood Specimen for Hereditary Metabolic and Hematologic Disorders~~" means blood obtained for a screening (not diagnostic) test, performed on the dried blood spot on a filter paper, to establish the likely presence of hereditary disorders specified by the Division of Public Health.
2. "~~Newborn Child~~" means any infant born in the state who is under 4 weeks of age.
3. "~~Hereditary Metabolic Disorder~~" means a disorder caused by a genetic alteration which results in a defect in the structure or function of a specific enzyme or protein. These disorders include but are not limited to: Phenylketonuria (PKU), Galactosemia, and Maple Syrup Urine Disease (MSUD).
4. "~~Congenital Hypothyroidism~~" means absence of or deficiency of thyroid hormones.
5. "~~Hereditary Hemoglobin Disorder~~" in these regulations means a condition in which a mutation in the hemoglobin gene, or in genes involved in hemoglobin synthesis, produces a variation in the hemoglobin structure which results in variation in hemoglobin function. The term "~~Hemoglobinopathies~~" includes Sickle Cell Anemia, Sickle Cell Hemoglobin C Disease (SC Disease), Sickle Cell Beta Thalassemia, Beta Thalassemia, Alpha Thalassemia, Hemoglobin C Disease and other clinically important variations in hemoglobin structure.
6. "~~Kit~~" means any or all parts of the combined materials, laboratory slips, lancets, envelopes, Newborn Screening Program pamphlet or other components provided by the State Newborn Screening Program for the purposes of collection and submission of specimens for laboratory tests.
7. "~~Unsatisfactory Specimen~~" means
  - a. a blood specimen on which an insufficient quantity of blood is obtained, or
  - b. a blood specimen on which an accurate analysis cannot be performed due to some technical or laboratory variation.
8. "~~IMF~~" means Insufficient Milk Feeding prior to the taking of the specimen.
9. "~~Satisfactory Specimen~~" means a blood specimen on which an accurate laboratory analysis for hereditary disorders can be performed.
10. "~~Designated Laboratory~~" means a laboratory or laboratories, specified by the Division of Public Health, capable of performing the newborn screening tests. The designated laboratory is chosen by the Division of Public Health following Request for Proposals sent to qualified laboratories who compete for the contract.

### **SECTION II ~~INFANTS TESTED FOR METABOLIC AND HEMOGLOBIN DISORDERS~~**

Every newborn infant in Delaware shall be tested for at least the following metabolic and hemoglobin disorders by a designated laboratory:

- (a) Phenylketonuria
- (b) Galactosemia
- (c) Congenital Hypothyroidism
- (d) Hemoglobinopathies

Analysis of the blood specimens for the required screening tests must be performed by the laboratory identified by the Division of Public Health.

Other hereditary disorders may be added and changes made in testing procedures and timing of testing as recommended by the Delaware Newborn Screening Program with the approval of the Director of the Division of Public Health.

### **SECTION III ~~INFORMATION TO MOTHER ABOUT NEWBORN SCREENING PROGRAM~~**

Each pregnant woman shall be supplied with a Newborn Screening Program pamphlet.

The person responsible for providing a Newborn Screening Program pamphlet, shall be in order of responsibility:

- (a) the health care facility or practitioner responsible for care of the pregnant woman;
- (b) the hospital, alternate birthing facility, other health care facility, or practitioner responsible for obtaining the specimen.

The Newborn Screening Program pamphlet is available from the Newborn Screening Program Office.

### **SECTION IV ~~PERSONS RESPONSIBLE FOR SUBMITTING SPECIMENS FOR METABOLIC AND HEMOGLOBIN DISORDERS~~**

The person or institution responsible for assuring that a satisfactory specimen is submitted for testing the infant for metabolic and hemoglobin disorders, shall be in order of responsibility:

- (a) the hospital, alternate birth facility, or other licensed health care facility where the infant is born, and
- (b) the newborn's primary care provider; or if no provider is identified;
- (c) the parent or legal guardian.

In the case of infants entering a health care facility before 48 hours of age as a result of transfer from another health care facility or an infant not born in a hospital or other licensed health care facility, the receiving health care facility shall be responsible for the timely collection of specimens.

**SECTION V****MANNER OF SUBMITTING SPECIMENS**

1. All specimens submitted to the designated laboratory for testing for Metabolic and Hemoglobin Disorders shall be collected using kits available from the Newborn Screening Program Office.
2. Specimens collected for testing for Metabolic and Hemoglobin disorders shall be forwarded within 24 hours of collection.

**SECTION VI****TIMING OF COLLECTING SPECIMENS FOR TESTING INFANTS**

A specimen for testing for hereditary disorders shall be collected prior to hospital discharge where applicable, but in no event later than 5 days after birth from every infant surviving more than two days, as follows:

(1) In the case of infants born outside a hospital or other health care facility a specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferable between 36 and 72 hours after birth. A second specimen is to be collected between one and four weeks of age.

In the case of infants who are born in a hospital or health care facility or who are born outside and transferred into the hospital and who will remain in the hospital for 24 hours of milk feedings or more, a specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferable between 36 and 72 hours after birth. A second specimen is to be collected between one and four weeks of age.

In the case of preterm or sick newborns, the initial specimen may be collected as late as 5 days of age. The second specimen on preterm or sick newborns is to be done at hospital discharge, at one month of age or when the newborn attains a weight of 2500 grams, whichever comes first.

(4) In the case of infants discharged from a hospital or other health care facility before 24 hours of milk feedings, a specimen shall be obtained immediately prior to discharge from the facility, and a second specimen shall be collected from such infants after 72 hours but before 14 days of age.

**SECTION VII****PROCEDURES FOR FOLLOW UP OF SPECIMENS COLLECTED PRIOR TO 24 HOURS SPECIMENS, AND THOSE THAT SHOW ABNORMAL RESULTS**

A. The appropriate institution shall develop adequate procedures to insure that a satisfactory blood specimen for hereditary disorders is collected (preferably by the time the child is 2 weeks old) from each newborn child who is described by one or more of the following categories:

(1) A newborn child who is discharged from the institution sooner than 24 hours after the onset of milk

feedings (IMF).

(2) A newborn child on whom the blood specimen for hereditary disorders is reported by the laboratory as "unsatisfactory."

B. The Division of Public Health, Office of Women's and Infants' Health, Newborn Screening Program staff will be responsible for:

(1) maintaining an ongoing system of monitoring, which will identify the time period during which each newborn infant has a specimen taken and submitted for testing and for following up of those specimen results.

(a) Where the specimen is taken prior to 24 hours of milk feedings, and a follow-up specimen must be taken, the monitoring system will track individual infants through the screening process to ensure timely and complete follow-up.

(b) Where specimens are reported by the designated laboratory as "unsatisfactory," a repeat specimen will be requested by the Division of Public Health, Newborn Screening Program.

(c) Where specimens are reported by the designated laboratory as "abnormal," results will be reported to the identified primary care provider and the newborn's parents in a timely manner. Arrangements for repeat screening and/or appropriate confirmatory testing and diagnosis will be made with the primary care provider and the parent. These arrangements will be made by the Newborn Screening Program by letter or telephone call followed by letter, depending upon the urgency of the situation. The Newborn Screening Program Office will make available, in a timely manner, information regarding appropriate referral and treatment recommendations to the primary health care provider. If no primary health care provider has been identified, the Newborn Screening Program will contact the family directly and assist in obtaining a health care provider and completion of the testing.

(d) The Newborn Screening Program Office will be notified in writing of the final resolution and confirmation of each case by the primary health care provider or consultant.

(2) tracking and follow-up of infants who do not have a primary care provider identified or whose identified primary care provider has indicated he/she is not caring for the child.

(3) reviewing and reporting on various aspects of the program including but not limited to:

- Specimen transit times;
- Specimen collection timing;
- Frequency of inadequate specimens;
- Completeness of laboratory slip;
- Quality of Newborn Screening case record; and
- Timing to treatment of identified abnormal.

## **SECTION VIII DEMOGRAPHIC DATA**

The Newborn Screening Program Office will maintain demographic data records on all newborn infants to be used for the purposes of deriving incidence/prevalence rates, and monitoring statistical trends and screening practices in hospitals, birthing facilities, and individual practices. This monitoring will enable the Newborn Screening Program Office to:

- (1) Assure that the most effective newborn screening program for the State of Delaware be maintained;
- (2) Periodically evaluate the overall effectiveness of the screening program;
- (3) Monitor and assure timely and complete follow-up of children with abnormal results; and
- (4) Identify facilities and health care providers that have patterns of submitting unsatisfactory specimens which can be corrected through training.

## **SECTION IX REPORTING OF RESULTS OF NEWBORN SCREENING TESTS**

The laboratory making the analysis shall report the results of the test to the Newborn Screening Program Office, within 5 days after receipt of the specimen. Abnormal test results shall be reported immediately, by phone or facsimile, to the Newborn Screening Program Office with written or electronic data transfer confirmation sent within 5 days after receipt of the specimen.

All test results shall be reported to the health care facility of birth and to the person specified as the primary care provider on the screening collection form, for entry into the medical record.

The results shall be available to the parent upon request through the Newborn Screening Program Office.

Positive or suspicious test results shall be reported to the parent, the identified primary health care provider and the authorized Newborn Screening Program Consultant.

All newborns who have been screened and have been found to be presumptively positive through the screening program will be referred to the Division's Child WATCH program.

## **SECTION X CONFIDENTIALITY OF RECORDS**

The Office of Women's and Infants' Health, Newborn Screening Program, shall maintain and treat as confidential all newborn screening records, including a register of every newborn child in whom a diagnosis of a hereditary disorder has been confirmed.

Information may be disclosed by the Newborn Screening Program in summary, statistical, or other forms which do not identify particular individuals. Individuals or groups requesting data for purposes of research must submit

proposals for review.

## **SECTION XI AVAILABILITY OF COUNSELING SERVICES**

The Office of Women's and Infants' Health shall, if so requested, assist each participant in the Newborn Screening Program and their families in gaining access to genetic counseling services that (i) are nondirective, (ii) emphasize informing the individual, and (iii) do not require restrictions in childbearing.

## **SECTION XII FEES FOR NEWBORN SCREENING TESTS PERFORMED IN THE DESIGNATED LABORATORY**

The Division of Public Health shall bill the institution for services provided to the institution for each newborn screened under these regulations including but not limited to, the cost of the kits for collection of specimens, the laboratory fee for analysis, and administrative costs. The fee will be determined annually (in July) based on cost of the program.

No Delaware newborn shall be denied testing for hereditary disorders because of inability of the newborn's parents to pay the fee. A "Statement of Fee Exemption" form will be provided to the practitioner or parent requesting exemption from fees. This form must be completed and submitted to the Newborn Screening Program Office within 30 days of birth.

## **SECTION XIII RELIGIOUS EXEMPTION FROM TESTING**

A newborn may be excused from screening if the parent objects to the tests because the screening tests conflict with the religious tenets or practices of the parents.

In the event a religious exemption is claimed from the requirements for testing for Hereditary Disorders, the person otherwise responsible for submitting the specimen for testing shall be responsible for submitting a completed affidavit to the Delaware Newborn Screening Program Office, signed by the infant's parents, using the following language:

1. (I) (We) (am) (are) the (parent(s)) (legal guardian of \_\_\_\_\_ (name of child)
2. (I) (We) hereby (swear) (affirm) that (I) (we) subscribe to a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.
3. (I) (We) further (swear) (affirm) that our belief is sincere and meaningful and occupies a place in (my) (our) life parallel to that filled by the orthodox belief in God.
4. This belief is not a political, sociological or philosophical view of a merely personal moral code.
5. This belief causes (me) (us) to request an exemption from the requirements for testing for Hereditary Disorders by the Delaware Newborn Screening Program for \_\_\_\_\_ (name of child).

Signature of Parent (s) or  
Legal Guardian(s)

SWORN TO AND SUBSCRIBED before me, a  
registered Notary Public, this \_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(Seal)

Notary Public

My Commission Expires:  
\_\_\_\_\_

#### **SECTION XIV**

#### **PENALTY FOR NON-COMPLIANCE**

Under the Authority granted to the State Board of Health under 16 **Del.C.** sec. 107, "(w)hoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Board shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

#### **107 Regulations Pertaining To The Testing Of Newborn Infants For Metabolic, Hematologic And Endocrinologic Disorders**

Under the authority granted to the Department of Health and Social Services, Division of Public Health under 16 **Del.C.** sec. 122 (1), 16 **Del.C.** sec. 122 (3) (h), and 29 **Del.C.** sec. 7904 the Department of Health and Social Services, Division of Public Health, State of Delaware adopts the following regulations pertaining to the testing of newborns for various disorders.

**PURPOSE:** These regulations describe the Newborn Screening Program administered by the Delaware Division of Public Health. Under the authorization of the statues listed above, each newborn delivered in the state must be provided a panel of screening tests to identify certain metabolic, hematologic and endocrinologic disorders that may result in developmental delay, mental retardation, serious medical conditions, or death.

These regulations clarify responsibilities among the parties involved.

These regulations apply to each newborn infant born in the State. The responsibility for implementation of the regulations rests with the institution in which the infant is born, or if an infant is born outside an institution, with the person required to prepare and file the certificate of birth and with the newborn's primary care provider.

#### **1.0 Definitions**

**"Blood specimen for metabolic, hematologic and endocrinologic disorders"** means a dried blood spot on a special filter paper utilized for screening (not diagnostic) tests to establish the likely presence of certain metabolic, hematologic or endocrinologic disorders.

**"Designated laboratory"** is the laboratory or laboratories, which have been selected by the Division of Public Health to perform these services.

**"Endocrinologic disorder"** means the absence or deficiency of a hormone resulting in interference with normal health, growth or development. These disorders include Congenital Hypothyroidism (CH) and Congenital Adrenal Hyperplasia (CAH).

**"Hematologic disorder"** means, in these regulations, a condition in which a variation in one or more of the hemoglobin structural genes or in one or more of the genes involved in hemoglobin synthesis produces a variation in hemoglobin structure or synthesis, which result in variation in hemoglobin function. The term "hemoglobinopathies" includes sickle cell anemia, sickle cell hemoglobin C disease (SC disease), sickle beta thalassemia, beta thalassemia, alpha thalassemia, hemoglobin C disease and other clinically important variations in hemoglobin structure or synthesis.

**"IME"** stands for Insufficient Milk Feeding, which ~~means that insufficient time had passed (24 hours) between the time of the first milk feeding and the time at which the bloodspot specimen was obtained~~ is an inadequate time frame for milk feedings (<24 hours) prior to obtaining the blood spot specimen.

**"Kit"** means any or all parts of the combined materials, laboratory filter paper specimen forms, lancets, envelopes, Newborn Screening Program brochure, and/or other components provided by the State Newborn Screening Program for the purposes of collection of the blood spot specimen and for submission of the blood spot specimen for laboratory testing.

**"Metabolic disorder"** means a disorder caused by a genetic alteration, which results in a defect in the structure or function of a specific enzyme or other protein. These disorders include, but are not limited to, Phenylketonuria (PKU), Galactosemia, Maple Syrup Urine Disease (MSUD), and Medium Chain Acyl-CoA Dehydrogenase (MCAD) Deficiency.

**"Newborn infant"** means any infant born in the state who is under 4 weeks of age.

**"Satisfactory specimen"** means a blood spot specimen on which an accurate laboratory analysis for the various disorders can be performed.

**"The Newborn Screening Advisory Committee"** means a committee, established through the Division of Public Health Newborn Screening Program, convened to provide advice and guidance to the Newborn Screening Program. Members include, but are not limited to: individuals or parents of individuals with one of the disorders for which screening is performed; physicians not employed by the Division of Public Health who have expertise in the disorders for which screening is performed; an attorney not employed by the Division of Public Health; an ethicist not employed by the Division of Public Health;

representatives of relevant agencies within the Department of Health and Social Services. The Committee meets at least semi-annually. The Director of the Division of Public Health will appoint members after recommendation by the Newborn Screening Program.

**“Unsatisfactory specimen”** means a blood spot specimen which is of insufficient quantity; or a blood spot specimen on which an accurate analysis for the various disorders cannot be performed.

## **2.0 Determination Of Required Screens**

2.1 The Director of the Division of Public Health or designee shall determine ~~what disorders will be tested for~~ the disorders subject to screening tests.]

## **3.0 Persons Responsible For Submitting Blood Spot Specimens For Screening For Metabolic, Hematologic And Endocrinologic Disorders**

3.1 The person or institution responsible for assuring that a satisfactory blood spot specimen is submitted for testing newborns for metabolic, hematologic and endocrinologic disorders shall be, in order of responsibility:

3.1.1 the hospital, birthing facility or other licensed health care facility in which the newborn is born,

3.1.2 the newborn’s primary care provider; or, if no provider is identified;

3.1.3 the parent or legal guardian.

3.2 In cases of newborns entering a health care facility before 48 hours of age as result of transfer from another facility or of an infant not born in a hospital or other licensed health care facility, the receiving facility shall be responsible for the timely collection of the blood spot specimen.

## **4.0 Manner Of Submitting Blood Spot Specimens**

4.1 All dried blood spot specimens submitted to the designated laboratory for testing shall be collected using kits available from the Newborn Screening Program office and/or designated laboratory.

4.2 Blood spot specimens collected for testing shall be forwarded from the institution at which the specimen is collected to the designated laboratory within 24 hours of collection, either by the designated Division of Public Health courier or by mail.

## **5.0 Timing Of Collecting The Blood Spot Specimen For Screening Infants**

5.1 A blood spot specimen for screening for metabolic, hematologic, and endocrinologic disorders shall be collected prior to hospital discharge, but in no event later than 3 days after birth from every newborn infant as follows:

5.1.1 For infants born outside of a hospital or other health care facility a specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferably between 36 and 72

hours of birth. A second specimen is to be collected between 7 and 28 days of age.

5.1.2 For infants who are born in a hospital or health care facility or who are born outside and transferred into the hospital and who will remain in the hospital for 24 hours of milk feedings or more a blood spot specimen shall be collected not sooner than 24 hours after the onset of milk feeding, but no later than 3 days after birth, preferably between 36 and 72 hours after birth. A second blood spot specimen is to be collected between 7 and 28 days of age.

5.1.3 For pre term or sick newborns, the initial blood spot specimen may be collected as late as 3 days of age and must be collected no later than 3 days regardless of birth weight, illness or nutritional status. The second dried blood spot specimen on preterm or sick newborns is to be done at hospital discharge or 28 days of life *which ever comes first*.

5.1.4 When an infant is discharged from a hospital or other health care facility before 24 hours of milk feedings a blood spot specimen shall be obtained immediately prior to discharge from the facility and a second dried blood spot specimen shall be obtained after 3 days of age and before 14 days of age.

## **6.0 Procedures For Follow Up Of Dried Blood Spot Specimens That Were Obtained Prior To 24 Hours Of Milk Feeding (Imf) And For Those Whose Results Are Designated As Abnormal Or Suspicious**

6.1 The hospital or institution of birth or the hospital to which a newborn is transferred shall develop adequate procedures to insure that a satisfactory blood spot specimen is collected by the time each newborn is 2 weeks old from each newborn who is described by one or more of the following categories:

6.1.1 a newborn that is discharged from the institution prior to 24 hours of milk feedings (IMF).

6.1.2 a newborn on which the blood spot specimen is reported by the laboratory as “unsatisfactory”.

6.2 The hospital or institution of birth, the hospital to which a newborn is transferred and the primary care provider of the newborn shall cooperate with the Newborn Screening Program in completing follow up of newborns whose blood spot specimen result is designated as “abnormal” or “suspicious.” This cooperation shall include:

6.2.1 providing appropriate demographic information to the Newborn Screening Program as requested on each baby whose blood spot specimen result is designated as “abnormal” or “suspicious.”

6.2.2 providing the Newborn Screening Program with clinical information on each newborn as necessary for interpretation of the results of the testing of the blood spot specimen.

## **7.0 Reporting Of Results Of Newborn Screening Tests**

7.1 The designated laboratory shall report the results to the Newborn Screening Program as designated in the contract. [All test results shall be available to the parent upon request through the birth hospital medical record department or their primary health care provider.]

7.2 The Newborn Screening Program shall contact with abnormal results the parent or legal guardian and primary health care provider in writing and/or by telephone.

7.3 A copy of the Newborn Screening laboratory report shall be available to the parent or legal guardian upon request made to the birth hospital medical record department or their primary health care provider.]

### **8.0 Confidentiality Of Records**

8.1 The Newborn Screening Program shall maintain and treat as confidential all newborn screening communications with institutions, families and health care providers. The Newborn Screening Program shall maintain and treat as confidential a record of every newborn in whom a diagnosis of one or more of the various metabolic, hematologic, or endocrinologic disorders is confirmed.

8.2 Information may be disclosed by the Newborn Screening Program in summary forms, which do not identify individuals. Individuals or institutions requesting summary data must submit a proposal to the Newborn Screening Program and to the Institutional Review Board of the Division of Public Health.

### **9.0 Fees For Newborn Screening Tests Performed In The Designated Laboratory**

9.1 The Division of Public Health Newborn Screening Program shall bill the institution or individual for services provided to the institution or individual for each newborn screened under these regulations including but not limited to, the cost of the kits for collection of specimens, the laboratory fee for analysis, and administrative costs. The fee will be determined annually (in July) based on cost of the program.

9.2 No Delaware newborn shall be denied testing for hereditary disorders because of inability of the newborn's parent[s or legal guardian] to pay the fee. A "Statement of Fee Exemption" form will be provided to the practitioner or parent requesting exemption from fees. This form must be completed and submitted to the Newborn Screening Program Office within 30 days of birth.

### **10.0 Religious Exemption From Testing**

10.1 A newborn may be excused from screening if the parent [or legal guardian] objects to the tests because the screening tests conflict with the religious tenets or practices of the parent[s or legal guardian].

10.2 In the event a religious exemption is claimed from the requirements for testing for Hereditary Disorders, the person otherwise responsible for submitting the

specimen for testing shall be responsible for submitting a completed affidavit to the Delaware Newborn Screening Program Office, signed by the infant's parent[s or legal guardian], using the following language:

1. (I) (We) (am) (are) the (parent(s)) (legal guardian(s)) of \_\_\_\_\_ (name of child)

2. (I) (We) hereby (swear) (affirm) that (I) (we) subscribe to a belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.

3. (I) (We) further (swear) (affirm) that our belief is sincere and meaningful and occupies a place in (my) (our) life parallel to that filled by the orthodox belief in God.

4. This belief is not a political, sociological or philosophical view of a merely personal moral code.

5. This belief causes (me) (us) to request an exemption from the requirements for testing for Hereditary Disorders by the Delaware Newborn Screening Program for \_\_\_\_\_ (name of child).

\_\_\_\_\_  
Signature of Parent (s) or  
Legal Guardian(s)

SWORN TO AND SUBSCRIBED before me, a  
registered Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.  
\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

10.3 The Newborn Screening Refusal Form will be provided through the Newborn Screening Program Office.

### **11.0 Penalty For Non-compliance**

Under the Authority granted to the Department of Health and Social Services, Division of Public Health under 16 Del.C sec. 107, "whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Division shall be fined not less than \$100 and not more than \$1,000, together with costs, unless otherwise provided by law."

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**DIVISION OF PUBLIC HEALTH**  
Statutory Authority: 16 Delaware Code,  
Section 133(16 Del.C. §133)

**ORDER**

**Cancer Treatment Program Regulations**

**Nature Of The Proceedings**

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt State of Delaware Cancer Treatment Program Regulations. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Ch. 101 and authority as prescribed by 16 **Del.C.** 133.

On May 1, 2004 (Volume 7, Issue 11), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by May 31, 2004, or be presented at a public hearing on May 21, 2004, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

### Findings Of Fact

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include minor modifications from those published in the May 1, 2004, Register of Regulations, based on comments received during the public comment period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Cancer Treatment Program Regulations are adopted and shall become effective July 10, 2004, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi,  
Secretary, Department of Health  
and Social Services  
Date of Signature 6.15.04

### Summary Of Evidence

A public hearing was held on May 21, 2004, at 9:30 a.m. in the Third Floor Conference Room of the Jesse Cooper Building located on Federal and Water Streets, Dover, Delaware before David P. Walton, Hearing Officer. The purpose of the hearing was to discuss the proposed Department of Health and Social Services (DHSS) Cancer Treatment Program Regulations. Announcements regarding the public hearing were published in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Paul Silverman, Section Chief of the Center of Health

Information Management and Disease Prevention of the Division of Public Health (DPH) made the agency’s presentation. Four individuals made comments at the hearing and five letters were received commenting on the proposed Regulations. All comments were received during the public comment period (May 1 through May 31, 2004). Organizations that commented included:

- Delaware Developmental Disabilities Council
- State Council for Persons with Disabilities
- Governor’s Advisory Council for Exceptional Citizens
- National Oncology Nursing Society
- American Cancer Society
- The Leukemia and Lymphoma Society (Delaware Chapter)

Public comments and the DHSS (Agency) responses are as follows:

- **Section 4.1.1 states, “Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.” There was concern expressed that cancer treatment will not include monitoring for cancer recurrence during or after remission for patients with indolent or chronic cancers such as Chronic Lymphocytic Leukemia or Indolent Non-Hodgkin Lymphoma.**

*Agency Response:* If in the opinion of the physician the patient is in remission an only requires monitoring and not cancer treatment, the cost of monitoring is not covered under the Cancer Treatment Program (CTP). While the Agency would like to cover such monitoring expenses, the CTP has a limited budget designed to provide benefits for active cancer treatment for as many eligible people as possible. The Agency will monitor the occurrence of this situation and evaluate the potential for program expansion to address this need.

- **Section 10.1.4, states, eligibility terminates 12 months after the date of cancer diagnosis. There was a concern expressed for certain kinds of cancer, treatment may not be necessary for a year or more. It was recommended that this section be changed to read, eligibility terminates 12 months after the date of first treatment.**

*Agency Response:* The Agency agrees with this comment and has revised the regulations accordingly.

- **Section 10.2 states, “If eligibility is terminated, it may only be renewed for an individual who is**

diagnosed with another cancer for which coverage has not been previously provided.” Once again, this would affect those with chronic or indolent cancers for which recurrence may happen (and often times worse than the initial diagnosis). Perhaps allowing coverage to extend up to 2 or 3 recurrences before termination may be a better alternative.

**Agency Response:** Because eligibility for CTP benefits is limited to 12 months following the initiation of cancer treatment, this suggested modification to the regulation is not feasible at this time. The Agency will monitor the occurrence of this situation and evaluate the potential for program expansion to address this need.

- **Due to limited funding for this program, priority for treatment funds should be given to those patients with the best odds of attaining a meaningful remission.**

**Agency Response:** The CTP is designed to provide eligible individuals coverage for cancer treatment as prescribed by a physician, regardless of their prognosis.

- **Patients with metastasis disease at diagnosis with less than 30 percent chance of obtaining a remission should be excluded from treatment. However funding should be allotted for palliative care, i.e. radiation and medications for symptom management, as well as hospice care.**

**Agency Response:** The CTP is not designed to exclude patients based on their prognosis. The physician decides on appropriate treatment and the CTP provides benefits based on the physician’s prescribed treatment regimen.

- **Appropriate interim monitoring for treatment response should be included.**

**Agency Response:** If monitoring for treatment response is part of the treatment plan established by the physician and all other program eligibility factors are met, then it will be covered by the CTP.

- **Terminating care at 12 months is not appropriate. Patients should continue to have appropriate follow-up with the oncologist/hematologist.**

**Agency Response:** While the Agency would like to cover follow-up expenses outside the 12-month eligibility period, the CTP has a limited budget designed to provide benefits for active cancer treatment for as many eligible people as

possible. The Agency will monitor the occurrence of this situation and evaluate the potential for program expansion to address this need.

- **Patients who relapse within 12 months after completion of initial chemotherapy, should not be retreated, but receive palliative care.**

**Agency Response:** Cancer treatment decisions are made by the physician for each individual case and the CTP will provide benefits for cancer treatment based on the physician’s professional judgment.

- **Select patients with indolent lymphoma, multiple myeloma, chronic lymphocyte leukemia, and insolent solid tumors, who do not require treatment at the time of diagnosis, should be included in the program to receive appropriate monitoring until such time as treatment is necessary.**

**Agency Response:** If the patient is diagnosed with cancer and monitoring is part of the physician’s prescribed treatment plan in the 12-month eligibility period, the CTP will cover these expenses.

- **Patients with chronic myeloid leukemia should receive coverage for Gleevec.**

**Agency Response:** All treatments covered by Medicaid will be covered by the CTP. If Gleevec is covered by Medicaid, it will be covered by the CTP.

- **Section 3.1: The word “disability” should be substituted for “handicap”.**

**Agency Response:** Section 3.1 was amended to reflect this update.

- **Section 3.3 and 15.0: Appeal rights are ostensibly limited to an internal review. In contrast, other DHSS discretionary programs generally incorporate the DSSM 5000 regulatory fair hearing process. It would be preferable to authorize access to the DSS fair hearing system or provide access to comparable appeal rights.**

**Agency Response:** The CTP is not a federally sponsored entitlement program, but is based on available state funding allotted on a yearly basis. As such, the Agency appeal process as stated in the regulations is sufficient and will be an appropriate and fair process.

- **References to “couples” in section 5.5 are problematic. It is unclear if sections 5.5.1-5.5.3.5**

are disjunctive or conjunctive, i.e., requiring only 1 of 5 criteria to be met or all 5 criteria to be met. There is no “or” or “and” to clarify intention. If disjunctive, section 5.5.3.5 is overbroad since it would count as a “couple” anyone who holds joint resources (even if unrelated and not co-habiting) and even though resources are immaterial to eligibility.

*Agency Response:* Based on this comment this section was amended to clarify intentions. Additionally, it was determined that section 5.5.3.5 was not appropriate and was deleted.

- **There was a concern that there was no standard for processing applications for the program. If DPH took 3 months to process an application, the applicant would have less than 9 months of services eligibility left.**

*Agency Response:* The Agency will process applications in an expeditious manner. Once applications are approved, treatment will be retroactively covered to the date of the initiation of cancer treatment ensuring the patient 12 months of benefits in the CTP.

- **Is there a mechanism for patients who have no insurance and qualify for this program to be moved into other programs?**

*Agency Response:* The patient’s ability to become eligible for Medicaid is not waived as a result of their participation in this program. If they are eligible for Medicaid, which has programs with many more benefits, patients can take advantage of Medicaid benefits.

- **There was a general concern that the program income qualification level may exclude some needing cancer treatment who are uninsured.**

*Agency Response:* After careful review of the income level qualification requirements, the regulation was adjusted to allow higher income levels to qualify for the CTP.

In addition to comments made above, there were many positive comments about Delaware enacting such a program to cover cancer treatment for the uninsured.

In addition to amendments noted above, minor grammatical corrections were made to the regulation for purposes of clarity.

The public comment period was open from May 1, 2004 to May 31, 2004.

Verifying documents are attached to the Hearing Officer’s record. The regulation has been approved by the Delaware Attorney General’s office and the Cabinet

Secretary of DHSS.

### 203 Cancer Treatment Program

#### 1.0 Purpose

The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to Delawareans for the treatment of cancer. The program serves Delawareans who have no health insurance.

#### 2.0 Availability Of Funds

2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

#### 3.0 General Application Information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, [handicap, disability,] religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is requested, but not required, to furnish his or her Social Security Number.

3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

#### 4.0 Technical Eligibility

4.1 The following are required to receive benefits under this program. The applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant’s licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman’s compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Be over the age of 18 years.

4.1.6 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 An inmate of a public institution shall be eligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.

4.2.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.

4.3 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

## **5.0 Financial Eligibility**

5.1 To be eligible for the CTP the applicant must have countable household income that is less than ~~500%~~ 650% of the Federal Poverty Level (FPL).

5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits – as paid after deduction for Medicare premium

5.3.2 Pension – as paid

5.3.3 Veterans Administration Pension – as paid

5.3.4 U.S. Railroad Retirement Benefits – as paid

5.3.5 Wages – net amount after deductions for taxes and FICA Senior Community Service Employment – net amount after deductions for taxes and FICA

5.3.6 Interest/Dividends – gross amount

5.3.7 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.

5.3.8 Credit Life or Credit Disability Insurance Payments – as paid

5.3.9 Alimony – as paid

5.3.10 Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses

5.3.11 Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses

5.3.12 Self Employment – countable income as reported to Internal Revenue Service (IRS)

5.3.13 Unemployment Compensation - as paid

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

5.4.6 Income tax refunds

5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)

5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

5.4.10 Loan payments received by individual

5.4.11 Proceeds of a loan

5.4.12 Foster care payments made on behalf of foster children living in the home

5.4.13 Retired Senior Volunteer Program (RSVP)

5.4.14 Veterans Administration Aid and Attendance payments

5.4.15 Victim Compensation payments

5.4.16 German reparation payments

5.4.17 Agent Orange settlement payments

5.4.18 Radiation Exposure Compensation Trust

Fund payments

5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments

5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:

5.5.1 Married couples if they live together[; and,]

5.5.2 Unmarried couples who live together as husband and wife.

5.5.3 Couples will be considered as living together as husband and wife if:

5.5.3.1 They say they are married, even if the marriage cannot be verified[; or,]

5.5.3.2 They are recognized as husband and wife in the community[; or,]

5.5.3.3 One partner uses the other's last name[; or,]

5.5.3.4 They state they intend to marry.

**[5.5.3.5 They jointly hold resources.]**

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined

to form a single family budget group only when the following conditions are met:

5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.

5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

## **6.0 Residency**

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently or for an indefinite period, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

### **6.3 Eligibility:**

6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

6.3.2 Will not be denied because of a durational residence requirement.

6.3.3 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

6.3.4 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

## **7.0 Verification of eligibility information**

7.1 The CTP may verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.

7.4 Failure to provide requested documentation may result in denial or termination of eligibility.

## **8.0 Disposition of applications**

8.1 The CTP will dispose of each application by a finding of eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the

CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

## **9.0 Changes in circumstances and personal information**

9.1 Enrollees are responsible for notifying the CTP of all changes in his circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.

9.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

## **10.0 Termination of eligibility**

### **10.1 Eligibility terminates:**

10.1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program.

10.1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

10.1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

10.1.4 12 months after the date ~~of that~~ cancer ~~diagnosis~~ treatment is initiated.]

10.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with another cancer for which coverage has not been previously provided.

## **11.0 Coverage and benefits**

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day ~~of~~ ~~diagnosis~~ that cancer treatment was initiated] provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided

for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

**12.0 Cancer treatment services which are not covered**

12.1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

12.2 Services not related to the treatment of cancer as determined by DHSS are not covered.

12.3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

**13.0 Changes in program services**

13.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

**14.0 Confidentiality**

14.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

**15.0 Review of CTP decisions**

15.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

15.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

15.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** §10115 in the May 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary Of Proposed Change**

**Citations**

7 CFR 273.10(f) – Certification Periods

7 CFR 273.12(a)(1)(vii) – Household Responsibility to Report

In October 2003, DSS expanded simplified reporting to all households except households where all members are elderly or disabled without earned income. Simplified reporting means those household only have to report when their monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for the household size. Households are given that amount when they are approved. Households subject to simplified reporting must have a certification period of six-months. Households, where all members are elderly or disabled without earned income, can be given a 12-month certification period. These households are called change reporters and must report changes when the household becomes aware of the change. To support simplified reporting, which has helped lower our food stamp error rate, the DCIS system was programmed to give households based on their circumstances either a six or twelve month certification period. Policy under 9068 is being changed to reflect that change.

**Summary Of Comments Received With Agency Response**

DSS thanks the Delaware Developmental Disabilities Council (DDDC) and the State Council for Persons with Disabilities (SCPD) for the following endorsement: Most families are assigned a 6-month certification and only need to report if monthly gross income exceeds 130% of the Federal Poverty Level. The regulation allows families whose members are exclusively "elderly or disabled" a 12-month certification period. Longer certification periods are generally correlated with less paperwork for families. DDDC and SCPD endorse the concept of the regulation.

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**Nature Of The Proceedings**

Delaware Health and Social Services ("Department") /

## Findings Of Fact

The Department finds that the proposed changes as set forth in the May 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program regarding the Certification Period Length is adopted and shall be final effective July 10, 2004.

Vincent P. Meconi,  
Secretary, Department of Health  
and Social Services  
Date of Signature 6.15.2004

## REVISIONS:

**9068.1 Certification Period Length**

DSS will assign the ~~longest~~ certification period possible according to each household's circumstances.

~~Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.~~

~~Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned shorter certification periods but not less than 3 months.~~

~~Only assign 1-2 month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.~~

Households subject to change reporting where all members are elderly or disabled and have no earned income will be assigned a 12-month certification period.

Households subject to simplified reporting will be assigned a 6-month certification period. A shorter certification period of no less than 4 months can be assigned on a case-by-case basis if the household's circumstances warrant it.

2 DE Reg. 2271 (6/1/1999)

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

Statutory Authority: 29 Delaware Code,  
Section 8051(d) (29 Del.C. §8051(d))

**Secretary's Order No.: 2004-A-0032**

**Regulations Governing the Green Energy Program**

## I. Background

On May 12, 2004 a public hearing was held in the DNREC Energy Office, located at 146 S. Governors Avenue, Dover, Delaware, to receive comment on the Department's proposed **Delaware Regulations for the Green Energy Program** (previously known as the Energy Alternatives Rebate Program under regulations that were published by the Economic Development Office approximately two years ago).

In 1999, the General Assembly enacted House Bill #10 (i.e., the Electric Restructuring Act of 1999), which created what was known at that time as the Environmental Incentive Fund. In August of 2002, Senate Resolution #30 was passed to allow the Environmental Incentive Fund monies to be used for renewable energy property grants. At that time, grant levels were set at 35 percent of the installed cost of solar, water heating, solar electric (commonly known as photovoltaics), geothermal heat pumps, and small wind turbines. The Fund was based in the Delaware Economic Development Office at that time.

Last year, Senate Bills #93 and #145 came before the General Assembly and were passed. These bills changed the Environmental Incentive Fund to the Green Energy Fund, or the Green Energy Program. It increased the incentive levels for eligible technologies. It also established two new programs: the Technology Demonstration Program; and the Research and Development Program. It also allowed for increased outreach and education. The eligible technologies under these programs are solar photovoltaic, solar hot water heating and cooling applications, and wind and fuel cells (note: for the purposes of this Green Energy Program, the fuel cells must use a renewable type fuel).

The Department's Energy Office has developed an application process which is now located on the Internet at the Green Plains Energy Website, maintained by their contractor, Sandra Burton ([www.greenplainsenergy.com](http://www.greenplainsenergy.com)). This website can also be reached through the Delaware Energy Office's website at [www.delaware-energy.com](http://www.delaware-energy.com). Basic eligibility requirements for the Green Energy Program are as follows: (1) one must be a Conectiv Power delivery customer (note: Delaware Electric Cooperative and municipalities are allowed to come into this program on a voluntary basis); (2) the equipment must be new and previously unused; and (3) the equipment must be approved equipment only, as per the regulation – solar pool heating equipment is not eligible. For all specific requirements of eligibility and references to various codes and standards concerning these matters, one should refer directly to the regulation language itself, which contains detail with respect to these issues.

Several members of the public attended this public hearing. Written comments were received by the Department subsequent to the hearing, due to the fact that

the Hearing Officer permitted the record to remain open for fifteen [15] calendar days after the hearing to allow for receipt of such comments. The Department formally responded to these written comments immediately thereafter, and a formal chart outlining the Energy Office's review and response to these comments was submitted to the Hearing Officer on June 9, 2004. Proper notice of the hearing was provided as required by law.

## II. Findings

Proper notice of the hearing was provided as required by law.

The Department has carefully considered all relevant public input regarding its proposed regulation and has provided a reasoned analysis and a sound conclusion regarding each comment as reflected in the June 10, 2004 Hearing Officer's Report, which is attached and incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

## III. Order

In view of the above findings, it is hereby ordered that the **Delaware Regulations Governing the Green Energy Program**, as revised through the public comment process and Departmental review, be promulgated in final form in the customary manner and established rule-making procedure required by law.

### Reasons

This rulemaking, together with the revisions made as a result of the public comment process, will provide a significant energy benefit for the current citizens of the State of Delaware, as well as for future generations to come. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to address the energy issues affecting Delaware at this time. In developing these regulations, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and wide array of public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del.C. Ch. 60.

John A. Hughes, Secretary

Date of Issuance: June 14, 2004

Effective Date of the Amendment: July 11, 2004

## Regulations for the Green Energy Program

### 1.0 Purpose

The purpose of this regulation is to prescribe procedures relating to the Green Energy Fund pursuant to 29 Del.C. Chapter 80, Subchapter 2, the Delaware Energy Act. It is the goal in establishing this regulation to provide a streamlined procedure for distributing Green Energy Funds through the use of grants.

This regulation provides rules of practice and procedure for application and disbursement of Green Energy Fund grants for renewable energy projects in Delaware.

### 2.0 Statutory Authority

These regulations are promulgated under authority of 29 Delaware Code, Section 8051 (d).

### 3.0 Definitions

For purposes of this regulation, the following words and phrases shall have the meanings set forth below.

"Conectiv Power Delivery" means the trade name used by Delmarva Power and Light Company.

"Department" means the Department of Natural Resources & Environmental Control [~~or its agent, the Delaware Energy Office, or such other agents as the department or Secretary may designate.~~]

"DP&L Service Territory" means the service territory of Delmarva Power and Light Company, doing business as Conectiv Power Delivery, or its successor, as such territory is reflected in the electric service territory maps maintained by the Delaware Public Service Commission under the authority of 26 Del.C. § 203B.

"Fiscal Year" means the budget and accounting year of the State beginning on July 1 and ending on June 30. Reference to a Fiscal Year by year number means the Fiscal Year ending on June 30 of the named year. For example, a reference to Fiscal Year 2004 means the period beginning on July 1, 2003 and ending on June 30, 2004.

"Freeze Tolerance Limit" means the temperature below which a Qualifying System for Solar Water Heating might suffer damage attributable to freezing.

"Fuel Cell" is an electrochemical energy conversion device which converts the chemical energy from a fuel directly into electricity and heat.

"Geothermal Heat Pump" means either an open or closed loop system or direct expansion system that uses the thermal energy of the ground or groundwater as the heat source and heat sink for residential or non-residential space heating and/or cooling. It may provide both space heating and cooling, cooling only or heating only functions. A closed loop system consists of a ground heat exchanger in which the heat transfer fluid is permanently contained in a closed system. An open loop system consists of a ground heat exchanger in which the heat transfer fluid is part of a larger

environment. A direct expansion system consists of a geothermal heat pump system in which the refrigerant is circulated in pipes buried in the ground, rather than using a heat transfer fluid, such as water or antifreeze solution in a separate closed loop, and fluid to refrigerant heat exchanger.

**“Green Energy Fund”** means the fund established by 29 Del.C. § 8054 and administered by the Department.

**“Grid-connected”, “Grid-tied” or “Interconnected”** means a condition in which a Qualifying System that is an electrical generating system serves and is electrically connected to an electrical load that is also connected to and served by the local utility electrical grid. The delivery or ability to deliver, any portion of the generating capacity into the utility electrical grid is not required, nor must the loads served be only alternating current loads. The Photovoltaic or Wind Turbine systems need only to be capable of serving electrical loads that would otherwise be served by the local utility.

**“Kilowatt”** means 1,000 Watts.

**“Kilowatt-hour”** means the basic unit of electric energy equal to one Kilowatt of power supplied to or taken from an electric circuit steadily for one hour. One-Kilowatt hour equals 1,000 Watt-hours. Electric energy is commonly sold by the Kilowatt-hour.

**“Nonresidential”** means all classes of customer purchasing electric power for uses other than for individual households. These groups of customers generally purchase electric power for commercial and industrial purposes. When used as an adjective with respect to Qualified Systems or Green Energy Program Grants, such term refers to systems owned by, or leased to, or grants awarded to Nonresidential persons.

**“Participating Contractor”** An appropriately Delaware licensed contractor who has submitted to the Department an application designated by the Department with all required attachments and maintains in full force all required insurance and warranties as described in Section 5.2.

**“Passive Solar Design”** A residential or non-residential building design that uses no external mechanical power, such as pumps or blowers, to collect and move solar heat.

**“Photovoltaic”** means a non-mechanical semiconductor device, most commonly made of silicon that produces direct current (dc) electricity [from sunlight].

**“Placed in Service”** means installed, operational, and producing output.

**“Professional Engineer”** means “engineer” as defined in Title 24 Del.C., Chapter 28, *Professional Engineers*, namely, a person who by reason of his or her advance knowledge of mathematics and the physical sciences, acquired by professional education and practical experience, is technically and legally qualified to practice Professional Engineering, and who is licensed by the Delaware Association of Professional Engineers.]

**“Purchaser”** means the purchaser or lessee of a Qualifying System.

**“Qualifying System”** has the meaning as set forth in Section 5.0.

**“Renewable Energy Technology”** shall have the meaning as prescribed in 29 Del.C. Chapter 80.

**“Renewable Fuel”** means a non-nuclear fuel that can be derived from non-fossil energy sources that are naturally replenishing and virtually inexhaustible.

**“Residential”** means the class or classes of customers purchasing electric power for household uses. When used as an adjective with respect to Qualified Systems or Green Energy Program Grants, such term refers to systems owned by, or leased to, or grants awarded to Residential persons.

**“Retailer”** means the vendor or lessor of a Qualifying System.

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

**“Solar Pathfinder™”** is a non-electronic instrument that measures the annual solar potential for a given site.

**“Solar Shade Analysis”** means an on site evaluation using a Solar Pathfinder™ or [functionally] equivalent device that measures the annual solar potential for the given site.

**“Solar Water Heating”** means the heating of water by use of the sun’s energy rather than electricity or gas or some other means.

**“State”** means the State of Delaware.

**“Ton of Capacity”** means 12,000 British Thermal Units (BTU) per hour of capacity.

**“Watt”** means the basic unit of measure of real electric power, or rate of doing work.

**“Watt-hour”** means the basic unit of measure of electric energy consumption. The total amount of energy used in one hour by a device that requires one Watt of power for continuous operation.

**“Wind Turbine”** means a mechanical/electrical system that converts the kinetic energy of blowing wind into [mechanical or] electric power.

#### **4.0 Green Energy Fund**

The Delaware 142nd General Assembly enacted and Governor Minner signed into law Senate Bills 93 and 145, which amended Title 29 of the Delaware Code to include new provisions for utilizing the Green Energy Fund. The law continues to encourage and promote the use of renewable electric generation technologies and alternate energy technologies by residential and non-residential (commercial) customers. Further, the law amends §8054(d) by dividing the Green Energy Fund into three separate and distinct programs.

The programs outlined in §8054(d) are described in full in this regulation and include the following:

Green Energy Program

Technology Demonstration Program  
Research and Development Program

## **5.0 Green Energy Program**

### **5.1 General Provisions**

All grants made under the Green Energy Program are on a first-come first-served basis and shall not exceed sixty-five percent (65%) of the total revenue collected during the previous fiscal year [or sixty-five percent (65%) or the total fund whichever is greater]. Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Green Energy Program.

Of the total funds available through Green Energy Program on an annual basis, the grants made for residential projects shall not exceed 40% of the total funds available and the non-residential grants shall not exceed 60% of the total funds available.

### **5.2 Eligibility**

The Delaware Green Energy Program is available to Conectiv Power Delivery electric customers or persons in Delaware receiving services from a non-regulated electric supplier which is contributing to the Green Energy Fund. All eligible equipment and products must be installed in Delaware.

### **5.3 Grant Reservation Request**

Customers and contractors applying for any grant must provide the following information to the Department prior to installing the system:

5.3.1 Completed Grant Reservation Form signed by both customer and contractor

5.3.2 The type of qualifying system

5.3.3 Copy of project estimate, purchase order, or letter of intent

5.3.4 Copy of the customer's recent Conectiv Power Delivery electric bill or a bill from a non-regulated electric supplier which is contributing to the Green Energy Fund

5.3.5 System schematic or line drawing

5.3.6 Plot plan illustrating well, turbine, or module location (wind and geothermal only, photovoltaic when system is ground mounted)

5.3.7 Manual J calculation (geothermal only)

5.3.8 Detailed system design and a predicted performance calculation verified by a Professional Engineer. (Non-residential solar water heating systems only.)

5.3.9 Roof diagram illustrating the following:

5.3.9.1 Roof dimensions (angle, length and width)

5.3.9.2 Location of collectors or modules on roof

5.3.9.3 Location of any roof-mounted or building-mounted equipment

5.3.9.4 Orientation & Tilt of array or

collectors

5.3.9.5 Areas of shading (Provide Solar Pathfinder results for all cases where shading occurs between 9:00 a.m. and 3:00 p.m. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant.)

### **5.4 Evaluation of Grant Reservation Request**

Upon receipt of the Grant Reservation Request and supporting documents, the Department will perform an evaluation to check the proposal package for its compliance with the requirements noted above. If the proposal package is complete, the Department will process the Grant Reservation and issue a Confirmation and Claim Form to the applicant. All requirements as outlined in Section 5.3 must be provided to the Department prior to processing the grant reservation.

The Department will reserve the funds for the project described in the Grant Reservation Request for six (6) months from the date of the reservation for residential applicants and twelve (12) months from the date of reservation for non-residential applicants. Since all grants are reserved on a first come-first served basis, viable projects that are not completed within the required time will be placed at the end of the queue and issued an extension of six (6) months from the date of the expired reservation for residential applicants and twelve (12) months from the date of expired reservation for non-residential applicants. To be considered of a reservation extension, the Department will require a project status and summary in writing fourteen (14) business days prior to the expiration of the original reservation.

### **5.5 Claim for and Distribution of Green Energy Program Grants**

After installation, the customer and contractor must provide the following to the Department

5.5.1 Completed Confirmation and Claim form signed by customer and contractor

5.5.2 Copy of electrical, plumbing or building inspection

5.5.3 Copy of completed and approved Conectiv Power Delivery Interconnection Agreement (photovoltaic, wind, fuel cell) or similar document from a non-regulated electric supplier which is contributing to the Green Energy Fund

5.5.4 Copy of product specification sheets

5.5.5 Copy of final sales invoice (invoice must include actual price paid, itemized list of components, labor, permit fees, method of payment)

5.5.6 Copy of warranty agreement

5.5.7 Copy of verification of completion of installation signed by customer and contractor.

Upon receipt of the completed Reservation Claim Form and all final documentation pertaining to the project as noted in Section [~~5.1.2 - 5.1.4~~ 5.5.1 - 5.5.6], the

Department will evaluate the Reservation and Claim Form and the required accompanying documents for consideration of grant approval. The contractor and customer are fully responsible for insuring that all forms and documentation have been supplied and the system meets all program requirements. The Department may make an inspection of the systems prior to final grant approval.

The Department will process the grant within 30 days of receipt of the Reservation and Claim Form and all supporting documentation. The Department will ordinarily process the payment to the purchaser, however, if the purchaser so requests in writing and documentation reflects the grant value was reduced directly from the purchase price, the Department will process the payment to the retailer or installing contractor.

**[Upon written request, the Department will pay the grant in two installments. Twenty-five percent (25%) of the grant paid after the equipment is delivered to the installation site and all required permits, approvals, certifications from all jurisdictions having authority are secured. The remaining twenty-five percent is paid when the system is operational and approved by the utility and/or appropriate inspection agent. The Department reserves the right to review any installation prior to any partial or final grant payment.]**

#### 5.6 Green Energy Program Participating Contractor Guidelines

##### 5.6.1 Participating Contractor Application

Contractors installing qualifying photovoltaic, solar water heating, geothermal heat pumps, small wind turbines, or fuel cells must complete the Participating Contractor Application prior to installing systems within the Green Energy Program. The application will consist of the following:

5.6.1.1 Name of company and key contact information

5.6.1.2 Brief history and organizational structure of company

5.6.1.3 Education, experience and licensure

5.6.1.4 General liability and statutory worker's compensation

5.6.1.5 Statement of reliability and good standing

##### 5.6.2 Education and Licensure

Participating Contractors shall maintain appropriate education and licenses to insure that only professionally designed systems are installed within the Program. The Participating Contractor must be licensed in the State of Delaware.

Where industry certification programs have been promulgated, grant recipients are encouraged to use industry certified contractors.

##### 5.6.3 Insurance Requirements

The Participating Contractor and anyone acting under its direction or control or on its behalf shall at

its own expense procure and maintain in full force at all times Commercial General Liability Insurance with a bodily injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS (\$1,000,000) for any occurrence.

5.6.4 Statement of Reliability and Good Standing Contractor must be reliable and in good standing with a "Satisfactory Record" (or no negative reports) with the Better Business Bureau. The Contractor shall provide a copy of their Better Business Bureau report to the Department upon request. Reports may be obtained at the following address.

BBB of Delaware

1415 Foulk Road, Suite 202 Foulkstone Plaza

Wilmington, DE 19803

Phone: (302)230-0108

Fax: (302)230-0116

Web Site: [www.delaware.bbb.org](http://www.delaware.bbb.org)

Email: [info@delaware.bbb.org](mailto:info@delaware.bbb.org)

##### 5.6.5 Limitation of Funds

The Program funds are limited. The Participating Contractor shall follow program guidelines to insure reservation of funds prior to installing a qualifying system.

##### 5.6.6 Owner's Manual Minimum Requirements

Contractors are required to provide each Program participant with an owner's manual. At a minimum, the owner's manual shall include the following:

5.6.6.1 Name and address of the seller

5.6.6.2 System model name or number

5.6.6.3 Identification and explanation of system components

5.6.6.4 Description of system operation

5.6.6.5 Description of system maintenance

5.6.6.6 Description of emergency procedures

5.6.6.7 Vacation procedures

5.6.6.8 Systems warranty

##### 5.7 Warranty

All qualifying systems receiving a Green Energy Program grant must have a full 5-year warranty against component failure, malfunction and premature output degradation. The warranty must cover all components for which the program incentive is granted and cover the full cost of repair and replacement of all components of the system. For professionally installed systems, the warranty must cover the labor to remove and replace defective components and systems.

##### 5.8 Code Compliance

All qualifying systems must be installed in accordance with the standards and specifications of the manufacturers of the components in the system, in compliance with all applicable local electric and building

codes, local ordinances and these guidelines. Where discrepancies, if any, exist with these guidelines and local codes, local codes shall govern.

## 5.9 Green Energy Program Renewable Energy Technologies

### 5.9.1 Photovoltaic Systems

#### 5.9.1.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for grid-connected photovoltaic systems installed by qualified contractors and customers up to 50% of the total installed costs. Grants will not exceed \$22,500 per residential dwelling for residential systems and \$250,000 per non-residential facility for non-residential systems. A photovoltaic system may not have eligible qualifying photovoltaic system costs in excess of \$12 per Watt.

#### 5.9.1.2 Accepted Products and Equipment

[5.9.1.2.1 Grid Interconnected] All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of the most recent version of Underwriters Laboratory Standard 1703.

All qualifying grid-connected systems must comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems, IEEE 1547, Standard for Interconnecting Distributed Resources with the Electric Power Systems and the appropriate generation interconnection requirements of Conectiv Power Delivery's, Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the Conectiv Power Delivery System or similar interconnection requirements from a non-regulated electric supplier which is contributing to the Green Energy Fund.

All inverters must be certified by a nationally recognized testing laboratory for safe operation and be certified as meeting the requirements of Underwriters Laboratory Standards 1741, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.

**[All grid interconnected systems must be designed and installed to comply with the National Electric Code (NEC).**

**5.9.1.2.2 Non-Grid Interconnected or Stand-Alone. All photovoltaic modules must be certified by a nationally recognized testing laboratory as meeting the requirements of the most recent version of Underwriters laboratory standard 1703.**

**All non-grid interconnected or stand-alone systems shall be designed and installed to comply with the National Electric Code (NEC).]**

#### 5.9.1.3 Array Orientation and Tilt

Optimum array orientation is a 180° true bearing. However, the program accepts solar arrays

oriented between South of due East and South of due West or between 80° and 260° magnetic. Systems installed between 260° and 80° magnetic or North of due East and North of due West are not eligible for a Green Energy Program Grant. Optimum array tilt is equal to the latitude at the installation site. However, the program accepts array tilt parameters as specified by the module manufacturer which may allow for tilts greater than and less than latitude.

#### 5.9.1.4 Array Shading

Photovoltaic arrays shall be installed such that the array has a minimum of six (6) hours of unobstructed sunshine daily inclusive of solar noon. A "solar window" of eight (8) hours of unobstructed sunshine is preferred.

The installing contractor is responsible for insuring that the system is free from shading. The installing contractor shall perform a "Solar Shade Analysis" [~~using the "Solar Pathfinder™"~~] to ensure the array meets the minimum daily sunshine requirements. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant.

#### 5.9.1.5 Aesthetics

Aesthetics must be considered in the design and mounting of the photovoltaic array. The designing contractor must provide a roof schematic complete with roof dimensions, array placement, orientation and areas of shading to the Department prior to installation. The designing contractor must make every attempt to configure the modules in an aesthetically pleasing manner free from shading.

## 5.9.2 Solar Water Heating

### 5.9.2.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for solar water heating systems installed by qualified contractors and customers up to 50% of the total installed cost. Grants will not exceed \$3,000 per residential dwelling for residential systems and \$250,000 per non-residential facility for non-residential systems.

Solar water heating systems integrated into a radiant heating application are eligible for a grant up to 50 % of the installed cost of the solar energy portion of the system. Grants will not exceed \$5,000 per residential dwelling for residential systems and \$250,000 per non-residential dwelling for non-residential systems.

### 5.9.2.2 Accepted Products and Equipment

A solar water heating system must be designed to reduce or eliminate the need for electric or gas heated water.

All qualifying residential solar water heating systems must be certified to meet the Solar Rating and Certification Corporation's (SRCC) OG- 300, Operating Guidelines and Minimum Standards for Certifying Solar

Water Heating Systems: An Optional Solar Water Heating System Certification and Rating Program and have a Freeze Tolerance Limit of minus 21 degrees Fahrenheit without electrical power.

All qualifying non-residential solar water heating systems and solar energy systems integrated into a radiant heating application must utilize collectors certified to meet the Solar Rating and Certification Corporation's (SRCC) OG-100, Operating Guidelines for Certifying Solar Collectors.

Non-residential solar water heating systems will be required to submit a detailed system design and a predicted performance calculation verified by a Professional Engineer (P.E.)

#### 5.9.2.3 Collector Orientation and Tilt

Optimum collector array orientation is a 180° true bearing. However, the program accepts solar collectors oriented between South of due East and South of due West or between 80° and 260° magnetic. Systems installed between 260° and 80° magnetic or North of due East and North of due West are not eligible for a Green Energy Program Grant. Optimum collector tilt is equal to the latitude at the installation site. However, the program accepts collector tilt parameters as specified by the collector manufacturer which may allow for tilts greater than and less than latitude.

#### 5.9.2.4 Collector Shading

All collectors shall be installed such that the collector array has a minimum of six (6) hours of unobstructed sunshine daily inclusive of solar noon. A "solar window" of eight (8) hours of unobstructed sunshine is preferred.

The installing contractor is responsible for insuring that the system is free from shading. The installing contractor shall perform a "Solar Shade Analysis" [using the "Solar Pathfinder"<sup>TM2</sup>] to ensure the array meets the minimum daily sunshine requirements. Results of the solar shade analysis must determine that 70% of the annual solar path's area is shade free to be considered for a grant.

#### 5.9.2.5 Aesthetics

Aesthetics must be considered in the design and mounting of the solar water heating collectors. The designing contractor must complete a roof schematic complete with roof dimensions, collector placement, orientation and areas of shading to the Department prior to installation. The designing contractor must make every attempt to configure the collectors in an aesthetically pleasing manner.

### 5.9.3 Small Wind Turbines

#### 5.9.3.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers incentives up to 50% of the total installed cost for small grid-connected wind

turbines installed by a qualified contractor for a qualified customer. Small wind turbines shall be at least 500 Watts [~~and not exceed 25 kilowatts~~]. Grants will not exceed \$22,500 per residential dwelling for residential systems and \$100,000 per non-residential facility for non-residential systems. A qualifying wind turbine system shall not exceed \$5.00 per Watt installed.

#### 5.9.3.2 Capacity Limits

Qualifying wind turbine systems shall be at least 500 Watts. [~~and not exceed 25 kilowatts~~].

The Department may reject applications if the location of the proposed wind turbine system has an inadequate wind resource for reasonable utilization of the equipment [as recommended by the turbine manufacturer]. Wind resources can vary significantly; therefore, the contractor and customer must take care that the location has adequate wind for the turbine selected. It is strongly recommended that a professional evaluation of your specific site be completed. The Department may require additional evidence of feasibility prior to approving the grant reservation.

#### 5.9.3.3 Accepted Products and Equipment

[5.9.3.3.1 Grid Interconnected.] All qualifying grid-connected small wind systems must use Underwriters Laboratory listed equipment and comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems, IEEE 1547, Standard for Interconnecting Distributed Resources with the Electric Power Systems and the appropriate generation interconnection requirements of Conectiv Power Delivery's, Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the Conectiv Power Delivery System or similar interconnection requirements from a non-regulated electric supplier which is contributing to the Green Energy Fund.

All inverters or other systems used in interconnection must be certified by a nationally recognized testing laboratory for safe operation and be certified as meeting the requirements of Underwriters Laboratory Standards 1741, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.

[All grid interconnected systems must be designed and installed to comply with the National Electric Code (NEC).

5.9.3.3.2 Non-Grid Interconnected or Stand-Alone All qualifying non-grid interconnected wind systems must use Underwriters Laboratory certified listed equipment and systems shall be designed and installed to comply with the National Electric Code (NEC)]

### 5.9.4 Geothermal Heat Pump Systems

#### 5.9.4.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for geothermal heat pump systems installed by qualified contractors and customers at the following rates:

Residential:

\$600 per ton not exceeding \$3,000 per residential dwelling for residential systems installed with an Energy Efficiency Ratio (EER) of 15.0 and Coefficient of Performance (COP) of 3.4 or greater or 50% of the installed cost whichever is lower, or

\$500 per ton not exceeding \$2500 per residential dwelling for residential systems with an Energy Efficiency Ratio (EER) of 14.0 and Coefficient of Performance (COP) of 3.0 or greater or 50% of the installed cost whichever is lower.

Non-residential:

\$600 per ton not exceeding \$25,000 per non-residential facility for non-residential systems with an Energy Efficiency Ratio (EER) of 15.0 and Coefficient of Performance (COP) of 3.4 or greater or 50% of the installed cost whichever is lower, or

\$500 per ton not exceeding \$25,000 per non-residential facility for non-residential systems with an Energy Efficiency Ratio (EER) of 14.0 and Coefficient of Performance (COP) of 3.0 or greater or 50% of the installed cost whichever is lower.

5.9.4.2 Accepted Products and Equipment

Qualifying geothermal heat pump systems must be sized in accordance with good heating, ventilation and air conditioning design practices for the occupancy, location and structure. Contractor shall provide a Manual J calculation, or other equivalent calculation, to determine proper size of equipment.

All qualifying systems must have a warranty for protection of the integrity and performance of the system for at least five years. All units installed under this program must have a minimum EER of 14.0 and COP of 3.0. Qualifying systems must meet the following:

Closed loop systems shall qualify under rating conditions in accordance with ISO 13256-1.

Open loop systems shall qualify under rating conditions in accordance with ISO 13256-1.

DX systems shall qualify under rating conditions in accordance with ARI 870.

5.9.5 Fuel Cells

5.9.5.1 Grant Limits

Subject to availability of funds, the Delaware Green Energy Program offers grants for grid-connected fuel cells installed by qualified contractors and customers up to 50% of the total installed cost for fuel cell systems operating on a renewable fuel source. Grants will not exceed \$22,500 for residential systems and \$250,000 for non-residential systems.

5.9.5.2 Accepted Products and Equipment

[5.9.5.2.1 Grid Interconnected] All Qualifying fuel cells systems must utilize a renewable fuel source and meet the National Fire Protection Association (NFPA) 853 for Stationary Fuel Cell Power Plants, the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 519- Recommended Practices and Requirements for Harmonic Control in Electric Power Systems, the most current version of the American National Standards Institute (ANSI) Z21.83 for Fuel Cell Power Plants, and input and output protection functions should be in compliance with ANSI C37.2 Device Function Number Specifications.

**[All grid interconnected systems must be designed and installed to comply with the National Electric Code (NEC).**

**5.9.5.2.2 Non-Grid Interconnected or Stand-Alone All non-grid interconnected or stand-alone systems shall be designed and installed to comply with the National Electric Code (NEC)]**

**6.0 Technology Demonstration Program**

**6.1 General Provisions**

The Technology Demonstration Program provides grants to projects that demonstrate the market potential for renewable technologies and accelerate the commercialization of these technologies in Delaware.

Technology Demonstration Program proposals will be accepted by the Department on a biannual basis. The total of all grants awarded under the Technology Demonstration shall not exceed twenty-five percent (25%) of all revenue collected for the Green Energy Fund during the previous fiscal year [or 25% of the fund balance whichever is greater].

To be eligible for consideration, a project must demonstrate a commercially available technology. Research and Development projects will not be funded under the Technology Demonstration Program. [To be eligible for consideration, a ★] project must demonstrate either a novel technology or a novel application of an available technology. Projects must include a public education component, such as integration into an educational program or location at a facility that allows public tours of the installed renewable energy technology.

Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Technology Demonstration Program.

**6.1.1 Grant Limits**

Subject to availability of funds, the Green Energy Fund's Technology Demonstration Program offers grants to projects that demonstrate the market potential of renewable energy technology in Delaware. Individual grants shall not exceed twenty-five percent (25%) of the cost of the eligible equipment for a renewable energy technology project and will not exceed \$200,000 per project.

### 6.1.2 Code Compliance

All Technology Demonstration Program projects must be installed in accordance with the standards and specifications of the manufacturers of the components in the system and in compliance with all applicable local electric, plumbing, and building codes and local ordinances to be considered for application.

### 6.1.3 Permits

All Technology Demonstration Program projects must obtain all relevant permits from the Delaware Department of Natural Resources and Environmental Control, other necessary state, local, regional, and federal permits to be considered for application.

### 6.1.4 Application Process

Technology Demonstration Program proposals will be accepted on a biannual basis. Applicants for the Technology Demonstration Program shall submit six (6) copies of the proposal and supporting documentation to the Department and receive approval prior to beginning the project.

In addition to the requirements in Sections [56.2, proposals for grants under Technology Demonstration Program shall include the following:

6.1.4.1 Detailed project description including location of project, size of project, description of building, structure or site]

6.1.4.2 Experience of project team

6.1.4.3 Detailed estimate of total project costs

6.1.4.4 List of project partners

6.1.4.5 Estimated energy impact

6.1.4.6 Letter of commitment from building owner or manager

6.1.4.7 Project schedule including detailed milestones

6.1.4.8 Design plans

The Department may request additional information upon review of initial proposal.

Applications will be reviewed by a committee established by the Department. The Department will determine the eligibility for a grant and will, in particular, consider the education requirements in 6.1. A statement of reservation of funds and authorization to proceed will be issued by the Department upon acceptance as a Technology Demonstration Program project.

### [6.1.5 Distribution of Technology Demonstration Grants

The Department will process the invoices from the grant recipient within 30 days of receipt of invoice and supporting documentation. Supporting documentation shall include but not limited to hours worked, receipts for expenditures and a brief progress report.]

### 6.2 Accepted Products and Equipment

All Technology Demonstration Program projects

interconnecting with the utility grid must comply with the Institute of Electrical and Electronic Engineers Standards Board (IEEE) 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems and the appropriate generation interconnection arrangement of Conectiv Power Delivery's, Technical Considerations Covering Parallel Operations of Customer Owned Generation of Less than 1 Megawatt and Interconnected with the Conectiv Power Delivery System or a similar document from a non-regulated electric supplier.

All inverters must be certified by a nationally recognized testing laboratory for safe operation as well as be certified as meeting the requirements of Underwriters Laboratory Standards 1741- 1999, Standard for Static Inverters and Charge Controllers for Use in Photovoltaic Power Systems.

### 6.2.1 Photovoltaic Systems

Photovoltaic projects located in Delaware ~~[that are in excess of \$12 per Watt]~~, use photovoltaic electricity to replace or substitute the need for non-renewable fuel, or include a novel or innovative use of photovoltaic design are eligible to receive a grant under the Technology Demonstration Program.

### 6.2.2 Solar Thermal

Solar thermal projects located in Delaware that use solar thermal energy to produce electricity, replace or substitute the need for non-renewable fuel, or includes a novel or innovative use of solar thermal design is eligible to receive a grant under the Technology Demonstration Program.

### 6.2.3 Small Wind Turbines

Small wind turbine projects located in Delaware ~~[that exceed \$5.00 per Watt installed and do not exceed 1 MW]~~ may apply for a grant under the Technology Demonstration Program.

### 6.2.4 Fuel Cells

Fuel cell projects located in Delaware using a ~~[renewable or]~~ non-renewable energy fuel source ~~[and not exceeding 1MW]~~ may apply for a grant under the Technology Demonstration Program.

### 6.2.5 Hydroelectric Generators

Hydroelectric projects located in Delaware and placed at existing dams or in free-flowing waterways may be eligible for a grant under the Technology Demonstration Program.

6.2.6 Storage, Conversion and Conditioning Equipment

Storage, conversion and conditioning equipment, for ~~[qualifying photovoltaic, small wind turbine, and hydroelectric systems use with renewable energy products]~~ that include a novel or innovative use of storage, conversion and conditioning equipment may be eligible to receive a grant under the Technology Demonstration Program.

### 6.2.7 Passive Solar Design

Passive solar designs that implement novel or innovative passive solar [products project] may be eligible to receive a grant under the Technology Demonstration Program. Grants for passive solar projects shall not exceed 25% of the installed cost of the product up to a maximum of \$3000 per residential dwelling for residential projects and \$20,000 per non-residential facility for non-residential projects.

The project shall meet the requirements in Section 6.1 and provide a cost-effectiveness analysis and a Manual J calculation or equivalent that demonstrates the estimated energy impact expected over the industry standards that provide a similar function.

## **7.0 Research and Development Program**

### 7.1 General Provisions

Subject to availability of funds, the Green Energy Fund's Research and Development Program offers grants to projects that develop or improve Renewable Energy Technology in Delaware. The Department will accept proposals for Research and Development Program grants for qualifying projects that improve the engineering, adaptation, or development of products or processes that directly relate to renewable energy technology.

The Delaware Research and Development Program grants are available to applicants located within the State of Delaware for projects conducted in the State of Delaware. Under no circumstances will the Department issue grants for land acquisition in association with any project proposed in the Research and Development Program.

### 7.2 Grant Limits

Subject to availability of funds, the Research and Development Program offers grants up to thirty-five percent (35%) of the cost of qualifying projects. Research and Development Program grants shall not exceed [~~\$200,000~~ **\$250,000**] per project.

Research and Development Program proposals will be accepted by the Department on a biannual basis. The total of all grants awarded in any one fiscal year shall not exceed ten percent (10%) of all revenue collected for the Green Energy Fund during the previous fiscal year [or **10% of the fund balance whichever is greater**].

Subject to the future availability of funds, the Department will consider multi-year projects in the Research and Development Program. Proposals seeking grants for multi-year projects shall not exceed fifty percent (50%) of the total annual funds available in the Research and Development Program.

### 7.3 Application Process

The Department will accept proposals for Research and Development Program grants for qualifying projects that improve the engineering adaptation, or development of products that directly relate to renewable energy technology.

The Department reserves the right to reject any or all proposals if the information provided is inadequate or incomplete.

The following describes the general approach envisioned for these projects. Alternative approaches to achieve the desired results may be considered, provided that the work scope is complete, addresses all of the technical issues, and has a convincing chance for success.

Applicants are to propose projects and tasks that address all issues described in Section 7.1 with care taken to emphasize the unique application advantages and environmental benefits that will result from the proposed project. The proposal should clearly define why this project is an improvement over existing products that provide a similar function.

### 7.4 Application Submittal

Research and Development Program proposals must be submitted and awarded prior to beginning the project. Failure to respond or follow the instructions regarding the order and content of the application may result in the application being deemed non-responsive, or result in an overall lower score during evaluation. The applicant must submit six (6) complete copies of the proposal to the Department for consideration.

### 7.5 Application Contents

The applicant must submit six (6) complete copies of the proposal to the Department consisting of a detailed description, a time line, a budget, itemized by task and include the following sections:

#### 7.5.1 Cover Page

The cover page must indicate the name of the organization, location, project title, and points of contact for the applicant, including names, titles, addresses, telephone and facsimile numbers, and electronic mail addresses of key project participants.

#### 7.5.2 Table of Contents

The narrative shall include a table of contents and page numbers corresponding to the elements outlined herein.

#### 7.5.3 Project Summary

A one-page project summary describing, in general terms, the proposed project, the proposed project benefits as a result of the grant, and a total cost estimate including cost shares and federal contribution must be submitted with the application. The summary should be informative and only contain information that is releasable to the public.

#### 7.5.4 Technical Proposal

The Technical Proposal portion shall be structured in accordance with the following sections:

The Technical Proposal section should include the following:

7.5.4.1 Technical concept, goals, and location of project

7.5.4.2 Anticipated benefits as a result of the project

7.5.4.3 Degree to which the proposed project advances the technology and commercial readiness of renewable energy technology in Delaware, including advantages and disadvantages compared to competing technologies

7.5.4.4 Economic viability of the proposed project

7.5.4.5 Estimated energy impact (generation or reduction)

7.5.4.6 Environmental benefits ~~[and impacts of the project reliability, noise levels, and suitability for grid interconnection]~~

7.5.4.7 **[Impact on electricity reliability, noise levels, and suitability for grid interconnection]**

7.5.4.~~7~~ **8**] Public benefit and value added to Delaware by successful completion of the proposed project

7.5.4.~~8~~ **9**] Potential for commercialization and the estimated market potential of project

7.5.4.~~9~~ **10**] Advantages of the proposed approach compared to alternative approaches.

7.5.5 Work Plan / Statement of Objectives  
This section should include the following:

7.5.5.1 Task-oriented Statement of Objectives with complete task descriptions

7.5.5.2 Work plan including decision points and performance-based progress measures

7.5.5.3 Work schedule including intermediate and major milestones

#### 7.5.6 Budget Narrative

An explanation of the proposed project costs including Green Energy Fund proceeds, applicant cost share, and any federal leveraged funds should be provided in this section. The Narrative shall include a budget by each task and include the following:

7.5.6.1 Job title and number of hours for each of the individual personnel proposed

7.5.6.2 Proposed equipment, materials, supplies, overhead and total labor costs.

7.5.7 Organization Qualifications and Personnel Qualifications

This section should include the following:

7.5.7.1 Applicant's current research directly related to the topic proposed

7.5.7.2 Applicant's experience on previous research and development projects similar in size, scope and complexity and the success in completing similar work

7.5.7.3 Description of the teaming structure for the project, including the names of the applicant and each participant involved in the project, as well as business agreements between the applicant and participants and the role of each team member

7.5.7.4 Project management concept with

respect to the proposed tasks, including organizational and individual responsibilities for each team member

7.5.7.5 Education, professional training, and the technical and business-related skills and work experience of key personnel, on projects similar in size, scope, and complexity to the topic proposed

7.5.7.6 Level and reasonableness of the time commitment

#### 7.5.8 Personnel Resumes

A resume should be provided for all key personnel involved in the proposed project. Each resume is limited to a maximum of two pages.

#### 7.6 Evaluation of Applications

A compliance review will be performed to check the proposal package for its compliance with the requirements of the Research and Development Program. All requirements as outlined in Section 7.1 **[and 7.5]** must be provided to the Department to be eligible for the comprehensive evaluation.

The Department reserves the right to void an application if the information requested is not received within the prescribed timeframe when requested or is inadequate or incomplete.

#### 7.6.1 Comprehensive Evaluation

All applications that fulfill the minimum application requirements, as determined under the compliance review, will be eligible for comprehensive evaluation. The comprehensive evaluation of proposals will be performed by the Department and a committee designated by the Department. In evaluating applications, the Department reserves the right to use any assistance deemed advisable, including qualified personnel from federal agencies, other government entities, universities, industry, and contractors. **[The Department will make every effort to use unbiased individuals and experts on the review committee.]** These individuals will be required to protect the confidentiality of any specifically identified trade secrets and/or privileged or confidential commercial or financial information obtained as a result of their participation in this evaluation.

**[The reviewers and their employers, employees, affiliates, and members shall excuse themselves from proposing projects under the Research and Development or Technology Demonstration Programs for the funding period during which they are serving on the reviewing committee.]**

All applicants will be notified in writing of the action taken on their applications. Applicants should allow at least 90 days for the Department evaluation. The status of any application during the evaluation and selection process will not be discussed with the applicant or any of its partners. **[unsuccessful application will receive a letter summarizing the committee's decision.]** Unsuccessful applications will not be returned to applicants.

## 7.7 Evaluation Criteria of Proposal

7.7.1 Criterion 1: Technical Description:  
Weight: 40%

In general, proposals will be evaluated based on the overall relevance to Renewable Energy Technology, including but not limited to any product improving the engineering of, adapting, or development or Renewable Energy Technology either as an independent piece of Renewable Energy Technology or as a component of Renewable Energy Technology.

Specifically, proposals will be scored based on how well they address the following requirements:

7.7.1.1 Technical concept, goals, and location of project

7.7.1.2 Anticipated benefits as a result of the project

7.7.1.3 Degree to which the proposed project advances the technology and commercial readiness of renewable energy technology in Delaware, including advantages and disadvantages compared to competing technologies

7.7.1.4 Economic viability of the proposed project

7.7.1.5 Jobs created as a result of project

7.7.1.6 Advantages of the proposed approach compared to alternative approaches

7.7.1.7 Economic viability of the proposed project

7.7.1.8 Estimated energy impact (generation or reduction)

7.7.1.9 Environmental benefits and impacts of the project

7.7.1.10 Reliability, noise levels, and suitability for grid interconnection

7.7.1.11 Public benefit and value added to Delaware by successful completion of the proposed project

7.7.1.12 Projects ability to leverage federal incentives

7.7.1.13 Projects ability to assist the State in meeting the goals the State Energy Plan

7.7.2 Criterion 2: Work Plan/Statement of Objectives: Weight: 30%

Specifically, applications will be scored based on how well they address the following requirements:

7.7.2.1 Task-oriented Statement of Objectives with complete task descriptions

7.7.2.2 Work plan including decision points and performance-based progress measures Level and reasonableness of the time commitment

7.7.2.3 Work schedule including intermediate and major –milestone

7.7.2.4 Advantages of the proposed approach compared to alternative approaches

7.7.2.5 Intent and commitment to

commercialize results of the proposed project

7.7.3 Criterion 3: Organization and Personnel Qualifications: Weight: 30%

In general, applications will be evaluated based on the capabilities of the personnel. Specifically, applications will be scored based on how well they address the following requirements:

7.7.3.1 The applicant's current research directly related to the topic proposed

7.7.3.2 The applicant's experience on previous research and development projects similar in size, scope and complexity and the success in completing similar work

7.7.3.3 A description of the teaming structure for the project, preference will be given to projects involving participants who represent a diversity (types and sizes) of proposing organizations, while meeting the eligibility requirements. The participation of universities, small businesses, and women or minority owned businesses are particularly encouraged to apply.

7.7.3.4 The project management concept with respect to the proposed tasks, including organizational and individual responsibilities for each team member

7.7.3.5 The education, professional training, and the technical and business-related skills and work experience key personnel, including major subcontractors, on projects similar in size, scope, and complexity to the topic proposed

7.7.3.6 The level and reasonableness of the time commitment

## 7.8 If Selected for Negotiation

If a proposal is selected for negotiation for a grant, additional information may be requested. [~~The Any~~] request [~~will may~~] specify the documents to be submitted, and to whom they must be submitted and may include, but not limited to [~~detailed~~] financial [~~information basis~~] for any participant(s) providing cost sharing [~~or performing work~~]. [~~This may include detailed explanation of overhead costs, hourly rate per staff person, and fringe benefits.~~]

The Department reserves the right to void an application if the information requested is not received within the prescribed timeframe or is inadequate or incomplete.

## 7.9 Grant Award

If upon completion of the Comprehensive Evaluation, the review committee finds that the proposed project fits the criteria of the Research and Development Program then a statement of reservation of funds and authorization to proceed will be issued by the Department.

All recipients of Research and Development Program grants may be required to participate in mandatory evaluation meetings on a periodic basis. During each evaluation meeting, the results to date and future plans for the project will be presented by the Recipient to an

evaluation panel selected by the Department. The results of each evaluation may be used by the Department to determine whether the project will continue to receive funding. Applicants should assume that at least two meetings per year will be required for evaluation and that up to two additional review meetings may be held at the applicant's location.

#### **[7.9.1 Distribution of Research and Development Grant**

The Department will process the invoices from the grant recipient within 30 days of receipt of invoice and supporting documentation. Supporting documentation shall include but not limited to hours worked, receipts for expenditures and a brief progress report.]

#### **8.0 Proprietary Application Information**

Applicants are hereby notified that the Department intends to make all applications submitted available to non-State personnel for the sole purpose of assisting in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified proprietary information obtained as a result of their participation in the evaluation.

Proposals submitted may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want to be used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted, provided the applicant follows the Department's "Request for Confidentiality" procedure [~~consistent with~~ **contained in**] the Department's "Freedom of Information Act" or "FOIA" regulation. It is important to understand that this FOIA regulation's confidentiality procedure is a necessary part of this regulation in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with the criteria and procedures established in the FOIA regulation.

The burden lies with the applicant asserting the claim of confidentiality to meet the criteria established in the FOIA regulation.

#### **9.0 Severability**

If any section, subsection, paragraph, sentence, phrase or word of these regulations is declared unconstitutional by a court of competent jurisdiction, the remainder of these regulations shall remain unimpaired and shall continue in full force and effect, and proceedings there under shall not be affected.

### **DIVISION OF AIR AND WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION**

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

**Secretary's Order No.: 2004-A-0033**

#### **Reporting of a Discharge of a Pollutant or Air Contaminant**

##### **I. Background**

A public hearing was held on June 25, 2003, to receive comment on proposed amendments to a regulation enacted under 7 Del.C. §6028 entitled "Reporting of a Discharge of a Pollutant or Air Contaminant". This regulation potentially affects any person who causes or contributes to certain environmental releases and discharges. In 2002, this particular regulation was amended for the purpose of updating the list of substances to agree with the federal list and reportable quantities, as well as to clarify reporting requirements, including the amendment to §6028 mandated by Senate Substitute No. 1 for Senate Bill 33, as amended by Senate Amendment No. 2.

In preparation for the hearing, AQM held a public workshop on March 27, 2003. At both the time of the hearing and subsequent to the hearing, the Department received public comments and concerns about these proposed amendments. Following the close of the record for comments, the Air Quality Management section prepared its initial Response Document, dated September 17, 2003, which addressed comments received during the pre-hearing, hearing and post-hearing phases of this process. Supplemental Response Documents were generated and forwarded to the Hearing Officer by AQM in November of 2003 and again in February of 2004. These documents contained additional requests for clarifications to be incorporated into the formal record of this matter. Upon further review, however, the Department determined that the proposed additional clarifications represented substantive changes which were not brought before the public at the time of the June 25, 2003 hearing. Based upon that determination, all requests for supplemental changes and clarifications to the formal record in this matter were withdrawn from consideration, as illustrated in AQM's memorandum to the Hearing Officer dated June 10, 2004. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated June 14, 2004, and that memorandum is

expressly incorporated herein by reference.

## II. Findings and Conclusions

Proper notice was provided as required by law.

The Department has provided an accurate summary and reasoned analysis of all relevant comments, together with a rational proposed course of action based on the record, as presented in AQM's Response Document of September 17, 2003, which is incorporated herein.

Additional clarifications proposed by AQM during the post-hearing period were determined to represent substantive changes which were not brought before the public at the time of the June 25, 2003 hearing; therefore, the same were formally withdrawn from consideration in this particular rulemaking process, as noted in AQM's memorandum to the Hearing Officer dated June 10, 2004.

## III. Order

In view of the above, I hereby order that the proposed amendments to 7 Del.C. §6028, "Reporting of a Discharge of a Pollutant or an Air Contaminant", be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

## IV. Reasons

Adopting the proposed amendments to 7 Del.C. §6028, "Reporting of a Discharge of a Pollutant or an Air Contaminant", will be beneficial to the State of Delaware, in that these amendments will add consistency and/or clarification to the existing regulations. Additionally, this rulemaking will further the policies and purposes of 7 Del.C. Ch. 60 by continuing to promulgate reasonable reporting requirements to ensure safety of the public health and environment, while taking into account industry concerns.

John A. Hughes  
Secretary

Date of Issuance: June 14, 2004

Effective Date of the Amendment: July 11, 2004

### Section 1 - General Provisions

1.1 The purpose of this Regulation is to describe the requirements for reporting the discharge of a pollutant or an air contaminant as mandated in 7 Del.C., Section 6028.

1.2 Information obtained through the provisions of this Regulation shall be made available for public inspection in accordance with 29 Del.C., Chapter 100 and Department of Natural Resources and Environmental Control (Department) Freedom of Information Act (FOIA) regulations except

where such information is of confidential nature as defined in 7 Del.C., Section 6014.

1.3 The list of chemicals and substances subject to the reporting requirements of this Regulation and the associated Delaware Reportable Quantity (DRQ) for each chemical and substance is contained in Section 3. The Department may, after providing proper public notice and an opportunity for public hearing, add or delete chemicals or substances or change the DRQ of any chemical or substance.

1.4 The reporting requirements under this Regulation are in addition to and not in lieu of, any other discharge reporting requirement found in any other state, federal, county or local government statutes, permits, regulations or ordinances.

1.5 [Reserved]

1.6 Definitions

A. "Delaware Reportable Quantity" (DRQ) – means the reportable quantity of chemicals, substances or mixtures listed in Section 3 of this regulation notwithstanding any reporting requirements by other state, federal, county or local government statutes, regulations or ordinances. To be reportable, the DRQ is based on the total quantity discharged over a rolling 24-hour period.

B. "Discharge" - means any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping, or disposing into the environment of any chemical or substance listed in Section 3 but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, waterborne vessel or pipeline pumping station engine. Discharge includes any environmental release.

C. "Environmental Emergency Notification and Complaint Number" – means the 24-hour DNREC telephone number(s) used for reporting the discharge of a pollutant or an air contaminant.

D. "Environmental Release" – means any spillage, leakage, emission, discharge, or delivery into the air or waters or on or into the lands of this State, of any sewage of 10,000 gallons or more, oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, or this Regulation.

E. "Extremely Hazardous Substance" – means substances listed in 40 CFR Part 355 Appendices A and B as amended May 7, 1996.

F. "Heating oil" - means petroleum that is one of nine technical grades. These are: No. 1; No.2; No.4-light; No.4-heavy; No.5-light; No.5-heavy; No.6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels used as substitutes for one of these fuels such as kerosene or diesel when used

for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.-

G. "Motor Fuel" - means petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, jet fuel, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

H. "Petroleum Substance" - means oil of any kind or in any form, including but not limited to petroleum, fuel oil, heating oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Vegetable-based oils such as soybean oil are not included.

I. "Sewage" - means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

## Section 2 - Reporting Requirements

### 2.1 Applicability

A. Unless otherwise stated in this Section, any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air or a pollutant, including petroleum substances, into surface water, groundwater or land in excess of any DRQ specified under this Regulation, shall report such discharge to the Department as soon as the person has knowledge of said environmental release or discharge while activating the appropriate emergency site plan unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.

B. Discharge in compliance with a validly issued state or federal permit(s) or in compliance with other state and federal regulations is exempt from the reporting requirements of this Regulation. **[This Regulation does not apply to natural gas and propane gas pipelines subject to oversight or regulation under the Federal Energy Regulatory commission (FERC) or the Federal Department of Transportation's Office of Pipeline Safety (OPS).]**

C. An owner or operator responsible for a transportation related discharge may meet the requirements of this Regulation by providing the information indicated in 2.4 to the 911 operator and, if applicable, to the responding Department representative at the scene. For the purposes of this paragraph, a "transportation related discharge" means a discharge during transportation when the stored chemical or substance is moving under active shipping papers and has not reached the ultimate consignee.

D. This Regulation does not apply to the proper application of a pesticide product registered under the

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et. seq. as amended August 3, 1996).

E. Any discharge that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8 (b) is exempt from reporting requirements of this regulation except:

(i) Initial notifications as required by 40 CFR part 302.8 (d) and (e).

(ii) "statistically significant increase" as defined in 40 CFR 302.8(b),

(iii) notification of a "new release" as defined in 40 CFR 302.8(g) (1), or

(iv) notification of a change in the normal range of the release as required under 40 CFR 302.8(g) (2).

Telephone notification required by 40 CFR 302.8 to the State of Delaware State Emergency Response Commission (SERC) shall be fulfilled by notifying the Department. Written notification reports required by 40 CFR 302.8 and sent to the EPA regional office shall serve as written notification to the State of Delaware SERC when copied to the Department.

(Reference: 40 CFR 302.8 as promulgated on July 24, 1990).

2.2 Discharges (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements of this Regulation. Should such a wholly contained discharge be discharged outside the building at a later time for any reason, that eventual discharge, when exceeding the DRQ, shall activate these reporting requirements.

### 2.3 [Reserved]

2.4 For the purpose of this regulation, notification of any reportable incident under Sections 2.1 or 2.3 by a person to the Department can be in person to Department staff or by telephone communication to the Department's Environmental Emergency Notification and Complaint Number. The notification must contain the following information which details the facts and circumstances of the discharge to the maximum extent practicable at the time of notice:

A. Facility name and/or location of the discharge.

B. Type of incident, e.g. discharge, fire, explosion, associated with discharge and whether assistance from outside emergency responders, e.g. 911, has been requested.

C. The chemical or substance involved with the incident of discharge including the Chemical Abstract System (CAS) number for the chemical or of the constituent chemicals when a mixture is discharged.

D. An indication of whether the chemical or chemicals are an extremely hazardous substance.

E. An estimate of the quantity of any such chemical(s) or substance(s) that was discharged into the environment.

F. The beginning time and the duration of the discharge.

G. The medium or media, e.g. soil, groundwater, surface water, air, etc., into which the discharge occurred.

H. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

I. Proper precautions to take as a result of the discharge, including evacuation.

J. The name(s) and telephone number(s) of the person(s) to be contacted for further information.

K. Such other information as the Department may require.

2.5 (A) Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department updating the information required under section 2.4 and including the following additional information to the extent known:

Part I.

- i. Actions taken to respond to and contain the release in the form of a chronology,
- ii. Any known or anticipated acute or chronic health risks associated with the release, and
- iii. Where appropriate, advice regarding medical attention necessary for exposed individuals.

Part II.

- iv. The facts and circumstances leading to the environmental release including a detailed identification of the pathway through which the discharge to the environment occurred and potential environmental impacts,
- v. Measures proposed to prevent such a discharge from occurring in the future and to remedy the deficiencies, if any, in the prevention, detection, response containment, cleanup or removal plan components,
- vi. Such other information which the Department may require.

Except where Part II information is of confidential nature as defined in 7 Del.C, § 6014, all written information obtained through this subsection shall be made available to Local Emergency Planning Committees (LEPCs) and the public.

(B) The Department reserves the right to require a written follow-up report for any environmental release, regardless of the substance or quantity, if there is concern for public health and safety or environmental welfare has been adversely affected. At the Department's discretion, the Department may require said person to file a written follow-up report, within 30 days or any shorter time as required by validly issued state or federal permits or by any pertinent regulations, setting forth all details contained in Sections 2.4 and 2.5.

The written follow-up report shall be in a format approved by the Department and submitted to the appropriate addresses for report submissions provided by the Department. The Department may establish procedures for notification and submission of written reports by computerized and electronic methods, including but not limited to, the submission of information through the internet.

**Section 3 - Chemicals, Substances and Mixtures and Associated Reportable Quantities.**

3.1 The purpose of this Section is to detail those chemicals, substances and mixtures applicable to the reporting requirements of this Regulation and to identify the DRQ at which reporting of the chemical or substance release or discharge is required.

3.2 Table A attached to this Section contains all chemicals and chemical categories and DRQ's that are subject to the reporting requirements of this Regulation. Notification of the discharge of a DRQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, zinc or any other solid substance on the DRQ list is not required if the mean diameter of the particles discharged is larger than 100 micrometers (0.004 inches).

3.3 When any incident of discharge occurs involving more than one (1) chemical or chemical category listed in this Section, the DRQ for the total discharge shall be the lowest DRQ of any constituent of that total, unless the mixture is known. In this case, the word "known" means that a determination of constituent levels is made either by direct testing or by calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, the discharge is subject to these notification requirements only when a constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ.

3.4 In all cases, discharges of infectious waste, as defined in Title 7 Chapter 64 § 6402, of any quantity or of any type occurring outside of a medical or health care facility are subject to the notification requirements of Section 2.4 of this regulation and the written requirements of Section 2.5 (B).

3.5 In all cases, discharges of petroleum substances of any quantity or of any type are subject to these notification requirements unless the petroleum substance is contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater, or is confined to the location of the discharge on an impervious surface. For discharges of petroleum substances that are contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater or are confined to the location of the discharge

on an impervious surface, the following shall apply:

A. Discharges of 25 gallons or more on land of motor fuel, jet fuel, heating oil, used oil or used petroleum substances must be reported.

B. Discharges of 150 gallons or more to land of any other petroleum substance not listed above or not uniquely identified on the Section 3 list, must be reported. .

Revised/Amended 2002

**Section 3 Table A**  
**Delaware List of Chemicals and Reportable Quantities in Pounds in Alphabetical Order**

CAS		NAME	DRQ
	DE	* Infectious waste	ALL*
	DE	* Petroleum subs., other than heating oil, motor fuel, used oil	150 gal.*
	DE	* Petroleum substances, heating oil, motor fuel, used oil	25 gal.*
	DE	*10,000 gallons sewage	10,000 gal*.
71751412	DE	Abamectin	100
83329		Acenaphthene	100
208968		Acenaphthylene	5000
30560191	DE	Acephate	100
75070		Acetaldehyde	1000
75876		Acetaldehyde, trichloro-	5000
60355		Acetamide	100
64197		Acetic acid	5000
108247		Acetic anhydride	5000
67641		Acetone	5000
75865		Acetone cyanohydrin	10
1752303		Acetone thiosemicarbazide	1000
75058		Acetonitrile	5000
98862		Acetophenone	5000
53963		2-Acetylaminofluorene	1
506967		Acetyl bromide	5000
75365		Acetyl chloride	5000
74862	DE	Acetylene	<u>F 1000 **</u>
591082		1-Acetyl-2-thiourea	1000
62476599	DE	Acifluorfen, sodium salt	100
107028		Acrolein	1

79061		Acrylamide	5000
79107		Acrylic acid	5000
107131		Acrylonitrile	100
814686		Acrylyl chloride	100
124049		Adipic acid	5000
111693		Adiponitrile	1000
15972608	DE	Alachlor	100
116063		Aldicarb	1
1646884		Aldicarb sulfone	1
309002		Aldrin	1
1116707	DE	Alkylaluminums	500
28057489	DE	d-trans-Allethrin	100
107119		Allylamine	50
107186		Allyl alcohol	100
107051		Allyl chloride	1000
7429905	DE	Aluminum (fume or dust)	100
1344281	DE	Aluminum oxide (fibrous forms)	100
20859738		Aluminum phosphide	100
10043013		Aluminum sulfate	5000
834128	DE	Ametryn	100
117793	DE	2-Aminoanthraquinone	10
60093	DE	4-Aminoazobenzene	10
92671		4-Aminobiphenyl	1
82280	DE	1-Amino-2-methylantraquinone	10
54626		Aminopterin	500
504245		4-Aminopyridine	1000
78535		Amiton	500
3734972		Amiton oxalate	100
33089611	DE	Amitraz	100
61825		Amitrole	10
7664417	DE	Ammonia	50
6484522	DE	Ammonium nitrate	500
7790989	DE	Ammonium perchlorate	500
13446101	DE	Ammonium permanganate	500
631618		Ammonium acetate	5000
1863634		Ammonium benzoate	5000
1066337		Ammonium bicarbonate	5000
7789095		Ammonium bichromate	10
1341497		Ammonium bifluoride	100

# FINAL REGULATIONS

131

10192300		Ammonium bisulfite	5000
1111780		Ammonium carbamate	5000
506876		Ammonium carbonate	5000
12125029		Ammonium chloride	5000
7788989		Ammonium chromate	10
3012655		Ammonium citrate, dibasic	5000
13826830		Ammonium fluoborate	5000
12125018		Ammonium fluoride	100
1336216		Ammonium hydroxide	1000
14258492		Ammonium oxalate	5000
6009707		Ammonium oxalate	5000
5972736		Ammonium oxalate	5000
131748		Ammonium picrate	10
16919190		Ammonium silicofluoride	1000
7773060		Ammonium sulfamate	5000
12135761		Ammonium sulfide	100
10196040		Ammonium sulfite	5000
3164292		Ammonium tartrate	5000
14307438		Ammonium tartrate	5000
1762954		Ammonium thiocyanate	5000
7783188		Ammonium thiosulfate	5000
7803556		Ammonium vanadate	1000
300629		Amphetamine	1000
628637		Amyl acetate	5000
123922		iso-Amyl acetate	5000
626380		sec-Amyl acetate	5000
625161		tert-Amyl acetate	5000
101053	DE	Anilazine	100
62533		Aniline	5000
88051		Aniline, 2,4,6-trimethyl-	500
90040		o-Anisidine	100
104949	DE	p-Anisidine	100
134292	DE	o-Anisidine hydrochloride	10
120127		Anthracene	5000
7440360		Antimony	5000
7647189		Antimony pentachloride	1000
7783702		Antimony pentafluoride	500
28300745		Antimony potassium tartrate	100

7789619		Antimony tribromide	1000
10025919		Antimony trichloride	1000
7783564		Antimony trifluoride	1000
1309644		Antimony trioxide	1000
1397940		Antimycin A	1000
86884		Antu	100
12674112		Aroclor 1016	1
11104282		Aroclor 1221	1
11141165		Aroclor 1232	1
53469219		Aroclor 1242	1
12672296		Aroclor 1248	1
11097691		Aroclor 1254	1
11096825		Aroclor 1260	1
7440382		Arsenic	1
7778394		Arsenic acid	1
1327522		Arsenic acid	1
1303328		Arsenic disulfide	1
1303282		Arsenic pentoxide	1
1327533		Arsenic trioxide	1
1303339		Arsenic trisulfide	1
7784341		Arsenous trichloride	1
7784421		Arsine	10
1332214		Asbestos (friable)	1
1912249	DE	Atrazine	10
115026		Azaserine	1
2642719		Azinphos-ethyl	100
319857		beta-BHC	1
319868		delta-BHC	1
101279	DE	Barban	1
7440393		Barium	100
542621		Barium cyanide	10
22781233		Bendiocarb	1
22961826		Bendiocarb phenol	1
1861401		Benfluralin	100
17804352		Benomyl	1
225514		Benz[c]acridine	100
98873		Benzal chloride	5000
55210		Benzamide	100

56553		Benz[a]anthracene	10
98168		Benzenamine, 3-(trifluoromethyl)-	500
71432		Benzene	10
100141		Benzene, 1-(chloromethyl)-4-nitro-	500
510156		Benzeneacetic acid, 4-chloro-.alpha.- (4-chlorophenyl)-.alpha.-hydroxy-, ethyl ester	10
98055		Benzeneearsonic acid	10
122098		Benzeneethanamine, alpha, alpha- dimethyl-	5000
98099		Benzenesulfonyl chloride	100
92875		Benzidine	1
3615212		Benzimidazole, 4,5-dichloro-2- (trifluoromethyl)-	500
205823	DE	Benzo(j)fluoranthene	10
207089		Benzo(k)fluoranthene	5000
205992		Benzo(b)fluoranthene	1
65850		Benzoic acid	5000
98077		Benzoic trichloride	10
205992		Benzol[b]fluoranthene	1
100470		Benzonitrile	5000
189559		Benzo(rst)pentaphene	10
191242		Benzo[ghi]perylene	5000
218019		Benzo(a)phenanthrene	100
50328		Benzo[a]pyrene	1
98884		Benzoyl chloride	1000
94360	DE	Benzoyl peroxide	100
100447		Benzyl chloride	100
140294		Benzyl cyanide	500
7440417		Beryllium	10
7787475		Beryllium chloride	1
7787497		Beryllium fluoride	1
7787555		Beryllium nitrate	1
13597994		Beryllium nitrate	1
191242		Benzo(g,h,i)perylene	5000
15271417		Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-(((methylamino) carbonyl)oxy)imino)-, (1-alpha,2- beta,4-alpha,5-alpha,6E)-	500
82657043	DE	Bifenthrin	100
92524		Biphenyl	100

111911		Bis(2-chloroethoxy) methane	1000
111444		Bis(2-chloroethyl) ether	10
542881		Bis(chloromethyl) ether	10
534076		Bis(chloromethyl) ketone	10
108601		Bis(2-chloro-1-methylethyl) ether	1000
97745	DE	Bis(dimethylthiocarbamoyl) sulfide	1
38661722	DE	1,3- Bis(methylisocyanate)cyclohexane	100
10347543	DE	1,4- Bis(methylisocyanate)cyclohexane	100
56359	DE	Bis(tributyltin) oxide	100
4044659		Bitoscanate	500
10294345		Boron trichloride	500
7637072	DE	Boron trifluoride	10
353424		Boron trifluoride compound with methyl ether (1:1)	1000
314409	DE	Bromacil	100
53404196	DE	Bromacil, lithium salt	100
28772567		Bromadiolone	100
7726956	DE	Bromine	100
13863417		Bromine chloride	100
7789382		Bromine pentafluoride	100
598312		Bromoacetone	1000
35691657	DE	1-Bromo-1-(bromomethyl)-1,3- propanedicarbonitrile	100
353593	DE	Bromochlorodifluoromethane	100
75252		Bromoform	100
74839		Bromomethane	1000
101553		4-Bromophenyl phenyl ether	100
106967		3-Bromopropyne	500
7787715	DE	Bromotrifluoride	500
598732	DE	Bromotrifluoroethylene	F 1000**
75638		Bromotrifluoromethane	100
1689845	DE	Bromoxynil	100
1689992	DE	Bromoxynil octanoate	100
52517	DE	Bronopol	100
357573		Brucine	100
106990		1,3-Butadiene	10
106978	DE	Butane	F 1000**
123739		2-Butenal, (e)-	100
25167673	DE	Butene	F 1000**

# FINAL REGULATIONS

133

590181	DE	2-Butene-cis	F 1000**
624646	DE	2-Butene-trans	F 1000**
106989	DE	1-Butene	F 1000**
107017	DE	2-Butene	F 1000**
75912	DE	tert-Butyl hydroperoxide	500
614459	DE	tert-Butyl perbenzoate	500
107711	DE	tert-Butyl peroxyacetate	500
927071	DE	tert-Butyl peroxyvalate	1000
123864		Butyl acetate	5000
110190		iso-Butyl acetate	5000
105464		sec-Butyl acetate	5000
540885		tert-Butyl acetate	5000
141322	DE	Butyl acrylate	100
71363		n-Butyl alcohol	5000
78922	DE	sec-Butyl alcohol	100
75650	DE	tert-Butyl alcohol	100
109739		Butylamine	1000
78819		iso-Butylamine	1000
513495		sec-Butylamine	1000
13952846		sec-Butylamine	1000
75649		tert-Butylamine	1000
2008415	DE	Butylate	1
85687		Butyl benzyl phthalate	100
106887	DE	1,2-Butylene oxide	100
123728	DE	Butyraldehyde	100
107926		Butyric acid	5000
79312		iso-Butyric acid	5000
75605		Cacodylic acid	1
7440439		Cadmium	10
543908		Cadmium acetate	10
7789426		Cadmium bromide	10
10108642		Cadmium chloride	10
1306190		Cadmium oxide	100
2223930		Cadmium stearate	1000
7778441		Calcium arsenate	1
52740166		Calcium arsenite	1
75207		Calcium carbide	10
13765190		Calcium chromate	10
156627		Calcium cyanamide	1000

592018		Calcium cyanide	10
26264062		Calcium dodecylbenzenesulfonate	1000
7778543		Calcium hypochlorite	10
56257		Cantharidin	100
105602	DE	Caprolactam	5000
133062		Captan	10
51832		Carbachol chloride	500
26419738		Carbamic acid, methyl-, O-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-	1
136301	DE	Carbamodithioic acid, dibutyl-, sodium salt	1
148185	DE	Carbamodithioic acid, diethyl-, sodium salt	1
1929777	DE	Carbamothioic acid, dipropyl-, S-propyl ester	1
52888809		Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	1
63252		Carbaryl	100
10605217		Carbendazim	1
1563662		Carbofuran	10
1563388	DE	Carbofuran phenol	1
75150		Carbon disulfide	100
353584		Carbon fluoride	100
630080	DE	Carbon monoxide	F 1000**
353504		Carbonic difluoride	1000
109615		Carbonochloridic acid, propylester	500
56235		Carbon tetrachloride	10
463581		Carbonyl sulfide	100
786196		Carbophenothion	500
55285148		Carbosulfan	1
5234684	DE	Carboxin	100
120809		Catechol	100
9004700	DE	Cellulose nitrate	500
2439012	DE	Chinomethionat	100
133904		Chloramben	100
305033		Chlorambucil	10
57749		Chlordane	1
115286	DE	Chlorendic acid	10
470906		Chlorfenvinfos	500
90982324		Chlorimuron ethyl	100

## FINAL REGULATIONS

0	DE	Chlorinated Benzenes	5000
0	DE	Chlorinated Naphthalene	5000
0	DE	Chlorinated Phenol	100
7782505		Chlorine	10
10049044		Chlorine dioxide	100
7791211	DE	Chlorine monoxide	F 100**
13637633		Chlorine pentafluoride	1
7790912		Chlorine trifluoride	100
24934916		Chlormephos	500
999815		Chlormequat chloride	100
494031		Chlornaphazine	100
97007	DE	1-Chloro-2,4-Dinitrobenzene	500
59507		p-Chloro-m-cresol	5000
107200		Chloroacetaldehyde	1000
79118		Chloroacetic acid	100
532274		2-Chloroacetophenone	100
0	DE	Chloroalkyl ethers	1
4080313	DE	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	100
106478		p-Chloroaniline	1000
108907		Chlorobenzene	100
124481		Chlorodibromomethane	100
96106	DE	Chlorodiethylaluminum	500
75683	DE	1-Chloro-1,1-difluoroethane	100
75456	DE	Chlorodifluoromethane	100
75003		Chloroethane	1000
107073		Chloroethanol	500
627112		Chloroethyl chloroformate	1000
110758		2-Chloroethyl vinyl ether	1000
67663		Chloroform	10
74873		Chloromethane	100
107302		Chloromethyl methyl ether	10
563473	DE	3-Chloro-2-methyl-1-propene	10
91587		2-Chloronaphthalene	5000
3691358		Chlorophacinone	100
95578		2-Chlorophenol	100
104121	DE	p-Chlorophenyl isocyanate	100
7005723		4-Chlorophenyl phenyl ether	5000
76062		Chloropicrin	10

126998	DE	Chloroprene	100
542767		3-Chloropropionitrile	1000
590216	DE	1-Chloropropylene	F 1000**
557982	DE	2-Chloropropylene	F 2000**
7790945		Chlorosulfonic acid	1000
63938103	DE	Chlorotetrafluoroethane	100
354256	DE	1-Chloro-1,1,2,2-tetrafluoroethane	100
2837890	DE	2-Chloro-1,1,1,2-tetrafluoroethane	100
1897456	DE	Chlorothalonil	100
95692	DE	p-Chloro-o-toluidine	10
3165933		4-Chloro-o-toluidine, hydrochloride	100
75887	DE	2-Chloro-1,1,1-trifluoroethane	100
75729		Chlorotrifluoromethane	100
460355	DE	3-Chloro-1,1,1-trifluoropropane	100
1982474		Chloroxuron	500
2921882		Chlorpyrifos	1
5598130	DE	Chlorpyrifos methyl	100
64902723	DE	Chlorsulfuron	100
1066304		Chromic acetate	1000
11115745		Chromic acid	10
7738945		Chromic acid	10
10025737		Chromic chloride	1
10101538		Chromic sulfate	1000
7440473		Chromium	5000
10049055		Chromous chloride	1000
4680788	DE	C.I. Acid Green 3	100
6459945	DE	C.I. Acid Red 114	10
569642	DE	C.I. Basic Green 4	100
989388	DE	C.I. Basic Red 1	100
1937377	DE	C.I. Direct Black 38	10
28407376	DE	C.I. Direct Blue 218	100
2602462	DE	C.I. Direct Blue 6	10
16071866	DE	C.I. Direct Brown 95	10
2832408	DE	C.I. Disperse Yellow 3	100
3761533	DE	C.I. Food Red 5	10
81889	DE	C.I. Food Red 15	100
3118976	DE	C.I. Solvent Orange 7	100
97563	DE	C.I. Solvent Yellow 3	100
842079	DE	C.I. Solvent Yellow 14	100
492808	DE	C.I. Solvent Yellow 34	100
128665	DE	C.I. Vat Yellow 4	100

# FINAL REGULATIONS

135

7440484	DE	Cobalt	10
10210681		Cobalt carbonyl	10
62207765		Cobalt, ((2,2'-(1,2-ethanediybis(nitrilomethylidyne))bis(6-fluorophenylato))(2-)-N,N',O,O')-	100
7789437		Cobaltous bromide	1000
544183		Cobaltous formate	1000
14017415		Cobaltous sulfamate	1000
0		Coke Oven Emmissions	1
64868		Colchicine	10
7440508		Copper	5000
544923		Copper cyanide	10
137291	DE	Copper, bis(dimethylcarbamodithioato-S,S')-	1
56724		Coumaphos	10
5836293		Coumatetralyl	500
8001589		Creosote	1
120718	DE	p-Cresidine	10
108394		m-Cresol	100
95487		o-Cresol	100
106445		p-Cresol	1000
1319773		Cresol (isomers and mixture)	100
535897		Crimidine	100
4170303		Crotonaldehyde	100
98828		Cumene	5000
80159		Cumene hydroperoxide	10
135206	DE	Cupferron	10
142712		Cupric acetate	100
12002038		Cupric acetoarsenite	1
7447394		Cupric chloride	10
3251238		Cupric nitrate	100
5893663		Cupric oxalate	100
7758987		Cupric sulfate	10
10380297		Cupric sulfate, ammoniated	100
815827		Cupric tartrate	100
21725462	DE	Cyanazine	100
57125		Cyanides (soluble salts and complexes) not otherwise specified	10
460195		Cyanogen	100
506683		Cyanogen bromide	1000

506774		Cyanogen chloride	10
506785		Cyanogen iodide	1000
2636262		Cyanophos	1000
675149		Cyanuric fluoride	1
1134232	DE	Cycloate	1
110827		Cyclohexane	1000
2556367	DE	1,4-Cyclohexane diisocyanate	100
108930	DE	Cyclohexanol	100
108941		Cyclohexanone	5000
66819		Cycloheximide	100
108918		Cyclohexylamine	10000
131895		2-Cyclohexyl-4,6-dinitrophenol	100
50180		Cyclophosphamide	10
75194	DE	Cyclopropane	F 1000**
68359375	DE	Cyfluthrin	100
68085858	DE	Cyhalothrin	100
94757		2,4-D Acid	100
1929733		2,4-D Esters	100
1928387		2,4-D Esters	100
25168267		2,4-D Esters	100
53467111		2,4-D Esters	100
1928616		2,4-D Esters	100
2971382		2,4-D Esters	100
94804		2,4-D Esters	100
94791		2,4-D Esters	100
1320189		2,4-D Esters	100
94111		2,4-D Ester	100
20830813		Daunomycin	10
533744	DE	Dazomet	1
53404607	DE	Dazomet, sodium salt	100
94826	DE	2,4-DB	100
72548		DDD	1
72559		DDE	1
3547044		DDE	5000
50293		DDT	1
17702419		Decaborane(14)	500
1163195	DE	Decabromodiphenyl oxide	100
8065483		Demeton	500
919868		Demeton-S-methyl	500

13684565		Desmedipham	100
1928434	DE	2,4-D 2-ethylhexyl ester	10
53404378	DE	2,4-D 2-ethyl-4-methylpentyl ester	10
110225	DE	Diacetyl peroxide (55% solution)	500
10311849		Dialifor	100
2303164		Diallate	100
615054	DE	2,4-Diaminoanisole	10
39156417	DE	2,4-Diaminoanisole sulfate	10
101804		4,4'-Diaminodiphenyl ether	10
496720		Diaminotoluene	10
823405		Diaminotoluene	10
95807		2,4-Diaminotoluene	10
25376458		Diaminotoluene (mixed isomers)	10
333415		Diazinon	1
334883		Diazomethane	100
226368	DE	Dibenz(a,h)acridine	10
224420		Dibenz(a,j)acridine	10
53703		Dibenz[a,h]anthracene	1
194592	DE	7H-Dibenzo(c,g)carbazole	10
5385751	DE	Dibenzo(a,e)fluoranthene	100
132649		Dibenzofuran	100
192654	DE	Dibenzo(a,e)pyrene	10
189640		Dibenzo(a,h)pyrene	10
191300	DE	Dibenzo(a,l)pyrene	10
94360	DE	Dibenzoyl peroxide	500
19287457		Diborane	10
96128		1,2-Dibromo-3-chloropropane	1
10222012	DE	2,2-Dibromo-3-nitropropionamide	100
124732	DE	Dibromotetrafluoroethane	100
110054		tert-Dibutyl peroxide	500
84742		Dibutyl phthalate	10
1918009		Dicamba	1000
1194656		Dichlobenil	100
117806		Dichlone	1
99309	DE	Dichloran	100
7572294		Dichloroacetylene	10
95501		1,2-Dichlorobenzene	100
541731		1,3-Dichlorobenzene	100
106467		1,4-Dichlorobenzene	100

25321226		Dichlorobenzene (mixed isomers)	100
91941		3,3'-Dichlorobenzidine	1
612839	DE	3,3'-Dichlorobenzidine dihydrochloride	10
64969342	DE	3,3'-Dichlorobenzidine sulfate	10
75274		Dichlorobromomethane	5000
110576		trans-1,4-Dichlorobutene	500
764410		1,4-Dichloro-2-butene	1
1649087	DE	1,2-Dichloro-1,1-difluoroethane	100
75718		Dichlorodifluoromethane	5000
156605		1,2-Dichloroethylene	1000
540590	DE	1,2-Dichloroethylene	100
1717006	DE	1,1-Dichloro-1-fluoroethane	100
75434		Dichlorofluoromethane	100
75092		Dichloromethane	1000
149746		Dichloromethylphenylsilane	1000
12756492 5	DE	Dichloropentafluoropropane	100
12890321 9	DE	2,2-Dichloro-1,1,1,3,3-pentafluoropropane	100
422480	DE	2,3-Dichloro-1,1,1,2,3-pentafluoropropane	100
422446	DE	1,2-Dichloro-1,1,2,3,3-pentafluoropropane	100
422560	DE	3,3-Dichloro-1,1,1,2,2-pentafluoropropane	100
507551	DE	1,3-Dichloro-1,1,2,2,3-pentafluoropropane	100
13474889	DE	1,1-Dichloro-1,2,2,3,3-pentafluoropropane	100
431867	DE	1,2-Dichloro-1,1,3,3,3-pentafluoropropane	100
13601379 1	DE	1,3-Dichloro-1,1,2,3,3-pentafluoropropane	100
11151256 2	DE	1,1-Dichloro-1,2,3,3,3-pentafluoropropane	100
97234	DE	Dichlorophene	100
120832		2,4-Dichlorophenol	100
87650		2,6-Dichlorophenol	100
696286		Dichlorophenylarsine	1
26638197		Dichloropropane	1000
8003198		Dichloropropane - Dichloropropene (mixture)	100
78999		1,1-Dichloropropane	1000

# FINAL REGULATIONS

137

78875		1,2-Dichloropropane	1000
142289		1,3-Dichloropropane	5000
26952238		Dichloropropene	100
10061026	DE	trans-1,3-Dichloropropene	10
78886		2,3-Dichloropropene	100
75990		2,2-Dichloropropionic acid	5000
542756		1,3-Dichloropropylene	100
4109960	DE	Dichlorosilane	100
76142	DE	Dichlorotetrafluoroethane	100
90454185	DE	Dichloro-1,1,2-trifluoroethane	100
34077877	DE	Dichlorotrifluoroethane	100
812044	DE	1,1-Dichloro-1,2,2-trifluoroethane	100
354234	DE	1,2-Dichloro-1,1,2-trifluoroethane	100
306832	DE	2,2-Dichloro-1,1,1-trifluoroethane	100
62737		Dichlorvos	10
51338273	DE	Diclofop methyl	100
115322		Dicofol	10
141662		Dicrotophos	100
77736		Dicyclopentadiene	100
60571		Dieldrin	1
1464535		Diepoxybutane	10
111422		Diethanolamine	100
38727558	DE	Diethatyl ethyl	100
109897		Diethylamine	100
91667		N,N-Diethylaniline	1000
692422		Diethylarsine	1
814493		Diethyl chlorophosphate	500
13419037 7	DE	Diethyldiisocyanatobenzene	100
117817		Di(2-ethylhexyl) phthalate	100
3288582		O,O-Diethyl S-methyl dithiophosphate	5000
311455		Diethyl-p-nitrophenyl phosphate	100
84662		Diethyl phthalate	1000
56531		Diethylstilbestrol	1
64675		Diethyl sulfate	10
557200	DE	Diethylzinc	1000
35367385	DE	Diflubenzuron	100
75376	DE	Difluoroethane	F 1000**
71636		Digitoxin	100

2238075		Diglycidyl ether	1000
101906		Diglycidyl resorcinol ether	10
20830755		Digoxin	10
94586		Dihydrosafrole	10
4128738	DE	4,4'-Diisocyanatodiphenyl ether	100
75790873	DE	2,4'-Diisocyanatodiphenyl sulfide	100
105646	DE	Diisopropyl peroxydicarbonate	500
55914		Diisopropylfluorophosphate	100
105748	DE	Diluaroyl peroxide	500
115264		Dimefox	500
55290647	DE	Dimethipin	100
60515		Dimethoate	10
119904		3,3'-Dimethoxybenzidine	100
20325400	DE	3,3'-Dimethoxybenzidine dihydrochloride	10
91930	DE	3,3'-Dimethoxybenzidine-4,4'-diisocyanate	100
11198409 9	DE	3,3'-Dimethoxybenzidine hydrochloride	10
75183		Dimethyl sulfide	1
124403		Dimethylamine	1000
2300665	DE	Dimethylamine dicamba	100
60117		4-Dimethylaminoazobenzene	10
121697		N,N-Dimethylaniline	100
57976		7,12-Dimethylbenz[a]anthracene	1
119937		3,3'-Dimethylbenzidine	10
612828	DE	3,3'-Dimethylbenzidine dihydrochloride	10
41766750	DE	3,3'-Dimethylbenzidine dihydrofluoride	10
79447		Dimethylcarbanyl chloride	1
2524030		Dimethyl chlorothiophosphate	500
75785		Dimethyldichlorosilane	500
91974	DE	3,3'-Dimethyl-4,4'-diphenylene diisocyanate	100
139253	DE	3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate	100
68122		N,N-Dimethylformamide	100
57147		1,1-Dimethyl hydrazine	10
105679		2,4-Dimethylphenol	100
576261		2,6-Dimethylphenol	100
99989		Dimethyl-p-phenylenediamine	10

131113		Dimethyl phthalate	5000
463821	DE	2,2-Dimethylpropane	F 1000**
77781		Dimethyl sulfate	100
644644		Dimetilan	1
602017	DE	2,3-Dinitroaniline	500
97029	DE	2,4-Dinitroaniline	500
25154545		Dinitrobenzene (mixed isomers)	100
99650		m-Dinitrobenzene	100
528290		o-Dinitrobenzene	100
100254		p-Dinitrobenzene	100
88857		Dinitrobutyl phenol	1000
534521		4,6-Dinitro-o-cresol	10
25550587		Dinitrophenol	10
51285		2,4-Dinitrophenol	10
329715		2,5-Dinitrophenol	10
573568		2,6-Dinitrophenol	10
619158	DE	2,5-Dinitrotoluene	500
618858	DE	3,5-Dinitrotoluene	500
25321146		Dinitrotoluene (mixed isomers)	10
121142		2,4-Dinitrotoluene	10
606202		2,6-Dinitrotoluene	100
610399		3,4-Dinitrotoluene	10
39300453	DE	Dinocap	100
1420071		Dinoterb	500
117840		n-Dioctylphthalate	5000
123911		1,4-Dioxane	100
78342		Dioxathion	500
82666		Diphacinone	10
957517	DE	Diphenamid	100
122394	DE	Diphenylamine	100
122667		1,2-Diphenylhydrazine	10
152169		Diphosphoramidate, octamethyl-	100
2164070	DE	Dipotassium endothall	100
142847		Dipropylamine	5000
136458	DE	Dipropyl isocinchomerate	100
85007		Diquat	1000
2764729		Diquat	1000
138932	DE	Disodium cyanodithioimidocarbonate	100
97778	DE	Disulfiram	1

298044		Disulfoton	1
514738		Dithiazanine iodide	500
541537		2,4-Dithiobiuret	100
330541		Diuron	100
27176870		Dodecylbenzenesulfonic acid	1000
2439103	DE	Dodine	100
120365	DE	2,4-DP	10
2702729	DE	2,4-D sodium salt	10
316427		Emetine, dihydrochloride	1
959988		alpha - Endosulfan	1
33213659		beta - Endosulfan	1
115297		Endosulfan	1
1031078		Endosulfan sulfate	1
145733		Endothall	1000
2778043		Endothion	500
72208		Endrin	1
7421934		Endrin aldehyde	1
106898		Epichlorohydrin	100
51434		Epinephrine	1000
2104645		EPN	100
50146		Ergocalciferol	1000
379793		Ergotamine tartrate	500
74840	DE	Ethane	F 1000**
1622328		Ethanesulfonyl chloride, 2-chloro-	500
76131	DE	Ethane, 1,1,2-trichloro-1,2,2,-trifluoro-	100
30558431		Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	1
10140871		Ethanol, 1,2-dichloro-, acetate	1000
5952261		Ethanol, 2,2'-oxybis-, dicarbamate	1
563122		Ethion	10
13194484		Ethoprop	1000
110805		2-Ethoxyethanol	1000
19393670		Ethyl methylketone peroxide	500
141786		Ethyl acetate	5000
107006	DE	Ethyl acetylene	F 1000**
140885		Ethyl acrylate	1000
100414		Ethylbenzene	1000

# FINAL REGULATIONS

139

538078		Ethylbis(2-chloroethyl)amine	500
541413	DE	Ethyl chloroformate	100
759944	DE	Ethyl dipropylthiocarbamate	1
74851	DE	Ethylene	<u>F 1000**</u>
111546		Ethylenebisdithiocarbamic acid, salts & esters	5000
107153		Ethylenediamine	5000
60004		Ethylenediamine-tetraacetic acid (EDTA)	5000
106934		Ethylene dibromide	1
107062		Ethylene dichloride	100
371620		Ethylene fluorohydrin	1
107211		Ethylene glycol	5000
151564		Ethyleneimine	1
75218		Ethylene oxide	10
96457		Ethylenethiourea	10
60297		Ethyl ether	100
75343		Ethylidene Dichloride	1000
75081	DE	Ethyl mercaptan	<u>F 1000**</u>
97632		Ethyl methacrylate	1000
62500		Ethyl methanesulfonate	1
109955		Ethyl nitrite	100
542905		Ethyl thiocyanate	10000
14324551	DE	Ethyl Ziram	1
52857		Famphur	1000
22224926		Fenamiphos	10
60168889	DE	Fenarimol	100
13356086	DE	Fenbutatin oxide	100
122145		Fenitrothion	1
66441234	DE	Fenoxaprop ethyl	100
72490018	DE	Fenoxycarb	100
39515418	DE	Fenpropathrin	100
115902		Fensulfothion	500
55389		Fenthion	100
51630581	DE	Fenvalerate	100
14484641	DE	Ferbam	1
1185575		Ferric ammonium citrate	1000
55488874		Ferric ammonium oxalate	1000
2944674		Ferric ammonium oxalate	1000
7705080		Ferric chloride	1000

7783508		Ferric fluoride	100
10421484		Ferric nitrate	1000
10028225		Ferric sulfate	1000
10045893		Ferrous ammonium sulfate	1000
7758943		Ferrous chloride	100
7782630		Ferrous sulfate	1000
7720787		Ferrous sulfate	1000
69806504	DE	Fluazifop butyl	100
4301502		Fluenetil	100
2164172	DE	Fluometuron	100
206440		Fluoranthene	100
86737		Fluorene	5000
7782414		Fluorine	10
640197		Fluoroacetamide	100
144490		Fluoroacetic acid	10
359068		Fluoroacetyl chloride	10
51218		Fluorouracil	500
7789211	DE	Fluosulfonic acid	25
69409945	DE	Fluvalinate	100
133073	DE	Folpet	100
72178020	DE	Fomesafen	100
944229		Fonofos	500
50000		Formaldehyde	100
107164		Formaldehyde cyanohydrin	1000
23422539		Formetanate hydrochloride	1
64186		Formic acid	5000
2540821		Formothion	100
17702577		Formparanate	1
21548323		Fosthietan	500
3878191		Fuberidazole	100
110178		Fumaric acid	5000
110009		Furan	100
109999		Furan, tetrahydro-	1000
98011		Furfural	5000
13450903		Gallium trichloride	500
765344		Glycidylaldehyde	10
70257		Guanidine, N-methyl-N'-nitro-N-nitroso-	10
86500		Guthion	1

76448		Heptachlor	1
1024573		Heptachlor epoxide	1
118741		Hexachlorobenzene	10
87683		Hexachloro-1,3-butadiene	1
319846		alpha-Hexachlorocyclohexane	10
77474		Hexachlorocyclopentadiene	10
67721		Hexachloroethane	100
1335871	DE	Hexachloronaphthalene	100
70304		Hexachlorophene	100
1888717		Hexachloropropene	1000
757584		Hexaethyl tetraphosphate	100
684162		Hexafluoroacetone	100
4835114		Hexamethylenediamine, N,N'-dibutyl-	500
822060	DE	Hexamethylene-1,6-diisocyanate	100
680319		Hexamethylphosphoramide	1
110543		Hexane	5000
51235042	DE	Hexazinone	100
67485294		Hydramethylnon	100
302012		Hydrazine	1
1615801		Hydrazine, 1,2-diethyl-	10
540738		Hydrazine, 1,2-dimethyl-	1
10034932	DE	Hydrazine sulfate	10
1333740	DE	Hydrogen	F 6000**
10035106		Hydrogen bromide	1000
7647010		Hydrogen chloride; Hydrochloric acid	5000
74908		Hydrogen cyanide	10
7664393		Hydrogen fluoride; hydrofluoric acid	100
7722841		Hydrogen peroxide	100
7783075		Hydrogen selenide	10
7783064		Hydrogen sulfide	100
123319		Hydroquinone	100
7803498	DE	Hydroxylamine	500
35554440	DE	Imazalil	100
193395		Indeno(1,2,3-cd)pyrene	100
55406536	DE	3-Iodo-2-propynyl butylcarbamate	1
13463406		Iron, pentacarbonyl-	10
297789		Isobenzan	100
75285	DE	Isobutane	F 1000**
78831		Isobutyl alcohol	5000

78842		Isobutyraldehyde	100
78820		Isobutyronitrile	1000
102363		Isocyanic acid, 3,4-dichlorophenyl ester	500
465736		Isodrin	1
25311711	DE	Isofenphos	100
78784	DE	Isopentane	F 1000**
78591		Isophorone	5000
4098719		Isophorone diisocyanate	100
78795		Isoprene	100
42504461		Isopropanolamine dodecylbenzene sulfonate	1000
75354		Isopropyl amine	4000
625558		Isopropyl formate	100
75310	DE	Isopropylamine	F 1000**
75296	DE	Isopropyl chloride	F 1000**
108236		Isopropyl chloroformate	1000
80057	DE	4,4'-Isopropylidenediphenol	100
119380		Isopropylmethylpyrazolyl dimethylcarbamate	1
120581		Isosafrole	100
143500		Kepone	1
463514		Ketene	10
77501634	DE	Lactofen	100
78977		Lactonitrile	1000
303344		Lasiocarpine	10
7439921		Lead	10
301042		Lead acetate	10
7784409		Lead arsenate	1
7645252		Lead arsenate	1
10102484		Lead arsenate	1
7758954		Lead chloride	10
13814965		Lead fluoborate	10
7783462		Lead fluoride	10
10101630		Lead iodide	10
10099748		Lead nitrate	10
7446277		Lead phosphate	10
1072351		Lead stearate	10
56189094		Lead stearate	10
52652592		Lead stearate	10

# FINAL REGULATIONS

141

7428480		Lead stearate	10
1335326		Lead subacetate	10
15739807		Lead sulfate	10
7446142		Lead sulfate	10
1314870		Lead sulfide	10
592870		Lead thiocyanate	10
21609905		Leptophos	500
541253		Lewisite	10
58899		Lindane	1
330552	DE	Linuron	100
554132	DE	Lithium carbonate	100
14307358		Lithium chromate	10
7580678		Lithium hydride	100
121755		Malathion	100
110167		Maleic acid	5000
108316		Maleic anhydride	5000
123331		Maleic hydrazide	5000
109773		Malononitrile	1000
12427382	DE	Maneb	100
7439965	DE	Manganese	100
15339363		Manganese, bis(dimethylcarbamodithioato-S,S')-	1
12108133		Manganese, tricarbonyl methylcyclopentadienyl	100
93652	DE	Mecoprop	10
148823		Melphalan	1
950107		Mephosfolan	500
149304	DE	2-Mercaptobenzothiazole	100
2032657		Mercaptodimethur	10
1600277		Mercuric acetate	500
7487947		Mercuric chloride	500
592041		Mercuric cyanide	1
10045940		Mercuric nitrate	10
21908532		Mercuric oxide	500
7783359		Mercuric sulfate	10
592858		Mercuric thiocyanate	10
7782867		Mercurous nitrate	10
10415755		Mercurous nitrate	10
7439976		Mercury	1

628864		Mercury fulminate	10
150505	DE	Merphos	100
10476956		Methacrolein diacetate	1000
760930		Methacrylic anhydride	500
126987		Methacrylonitrile	1000
920467		Methacryloyl chloride	10
30674807		Methacryloyloxyethyl isocyanate	10
10265926		Methamidophos	100
137428	DE	Metham sodium	1
74828	DE	Methane	F 1000**
558258		Methanesulfonyl fluoride	1000
67561		Methanol	5000
91805		Methapyrilene	5000
20354261	DE	Methazole	100
950378		Methidathion	500
16752775		Methomyl	100
94746	DE	Methoxone	10
3653483	DE	Methoxone sodium salt	10
72435		Methoxychlor	1
109864	DE	2-Methoxyethanol	100
151382		Methoxyethylmercuric acetate	500
75221		Methyl chloroformate	1
624920		Methyl disulfide	1
453189		Methyl fluoroacetate	1
421205		Methyl fluorosulfate	1
96333	DE	Methyl acrylate	100
563462	DE	2-Methyl-1-butene	F 1000**
563451	DE	3-Methyl-1-butene	F 1000**
80637		Methyl 2-chloroacrylate	500
79221		Methyl chlorocarbonate	1000
56495		3-Methylcholanthrene	10
3697243	DE	5-Methylchrysene	10
75790840	DE	4-Methyldiphenylmethane-3,4- diisocyanate	100
101144		4,4'-Methylenebis(2-chloroaniline)	10
101611	DE	4,4'-Methylenebis(N,N- dimethyl)benzenamine	10
5124301	DE	1,1'-Methylene bis(4- isocyanatocyclohexane)	100
101688		Methylenebis(phenylisocyanate)	5000

74953		Methylene bromide	1000
101779		4,4'-Methylenedianiline	10
115106	DE	Methyl ether	F 1000**
78933		Methyl ethyl ketone	5000
1338234		Methyl ethyl ketone peroxide	10
107313	DE	Methyl formate	F 1000**
60344		Methyl hydrazine	10
74884		Methyl iodide	100
108101		Methyl isobutyl ketone	5000
624839		Methyl isocyanate	10
556616		Methyl isothiocyanate	500
74931		Methyl mercaptan	100
502396		Methylmercuric dicyanamide	500
80626		Methyl methacrylate	1000
924425		N-Methylolacrylamide	100
298000		Methyl parathion	100
3735237		Methyl phenkapton	500
676971		Methyl phosphonic dichloride	100
115117	DE	2-Methylpropene	F 1000**
109068		2-Methylpyridine	5000
872504	DE	N-Methyl-2-pyrrolidone	100
1634044	DE	Methyl tert-butyl ether (MTBE)	<del>4000</del> 30
556649		Methyl thiocyanate	1000
56042		Methylthiouracil	10
75796	DE	Methyltrichlorosilane	<del>500</del> 50
78944		Methyl vinyl ketone	1
9006422	DE	Metiram	100
1129415		Metolcarb	1
21087649	DE	Metribuzin	100
7786347		Mevinphos	10
315184		Mexacarbate	1000
90948	DE	Michler's ketone	10
50077		Mitomycin C	10
2212671	DE	Molinate	1
1313275	DE	Molybdenum trioxide	100
76153	DE	Monochloropentafluoroethane	100
6923224		Monocrotophos	10
75047	DE	Monoethylamine	100
74895		Monomethylamine	100

150685	DE	Monuron	100
2763964		Muscimol	1000
505602		Mustard gas	500
88671890	DE	Myclobutanil	100
142596	DE	Nabam	100
300765		Naled	10
91203		Naphthalene	100
3173726	DE	1,5-Naphthalene diisocyanate	100
1338245		Naphthenic acid	100
130154		1,4-Naphthoquinone	5000
134327		alpha-Naphthylamine	100
91598		2-Naphthylamine	10
7440020		Nickel	100
15699180		Nickel ammonium sulfate	100
13463393		Nickel carbonyl	10
7718549		Nickel chloride	100
37211055		Nickel chloride	100
0	DE	Nickel Compounds/Nickel Coated Catalysts	200
557197		Nickel cyanide	10
12054487		Nickel hydroxide	10
14216752		Nickel nitrate	100
7786814		Nickel sulfate	100
54115		Nicotine	100
54115		Nicotine, and salts	100
65305		Nicotine sulfate	100
1929824	DE	Nitrapyrin	100
7697372		Nitric acid	1000
10102439		Nitric oxide	10
139139	DE	Nitrioltriacetic acid	10
90092	DE	m-Nitroaniline	500
88744	DE	o-Nitroaniline	500
100016		p-Nitroaniline	5000
99592	DE	5-Nitro-o-anisidine	100
98953		Nitrobenzene	1000
92933		4-Nitrobiphenyl	10
1122607		Nitrocyclohexane	500
79243		Nitroethane	500
1836755	DE	Nitrofen	10

# FINAL REGULATIONS

143

10102440		Nitrogen dioxide	10
51752		Nitrogen mustard	10
10102439		Nitrogen oxide	10
10544726		Nitrogen tetroxide	10
55630		Nitroglycerin	10
75525	DE	Nitromethane	500
25154556		Nitrophenol (mixed isomers)	100
554847		m-Nitrophenol	100
88755		2-Nitrophenol	100
100027		4-Nitrophenol	100
79469		2-Nitropropane	10
5522430	DE	1-Nitropyrene	10
924163		N-Nitrosodi-n-butylamine	10
1116547		N-Nitrosodiethanolamine	1
55185		N-Nitrosodiethylamine	1
62759		N-Nitrosodimethylamine	10
86306		N-Nitrosodiphenylamine	100
156105	DE	p-Nitrosodiphenylamine	100
621647		N-Nitrosodi-n-propylamine	10
759739		N-Nitroso-N-ethylurea	1
684935		N-Nitroso-N-methylurea	1
615532		N-Nitroso-N-methylurethane	1
4549400		N-Nitrosomethylvinylamine	10
59892		N-Nitrosomorpholine	1
16543558	DE	N-Nitrososornicotine	10
100754		N-Nitrosopiperidine	10
930552		N-Nitrosopyrrolidine	1
1321126		Nitrotoluene	1000
99081		m-Nitrotoluene	1000
88722		o-Nitrotoluene	1000
99990		p-Nitrotoluene	1000
99558		5-Nitro-o-toluidine	100
991424		Norbormide	100
27314132	DE	Norflurazon	100
2234131	DE	Octachloronaphthalene	100
29082744	DE	Octachlorostyrene	1
8014957		Oleum (fuming sulfuric acid)	1000
0		Organorhodium Complex (PMN-82-147)	10

19044883	DE	Oryzalin	100
20816120		Osmium tetroxide	1000
630604		Ouabain	100
23135220		Oxamyl	1
78717		Oxetane, 3,3-bis(chloromethyl)-	500
301122	DE	Oxydemeton methyl	100
19666309	DE	Oxydiazon	100
2497076		Oxydisulfoton	500
42874033	DE	Oxyfluorfen	100
7783417		Oxygen difluoride	1
10028156		Ozone	1
30525894		Paraformaldehyde	1000
123637		Paraldehyde	1000
1910425		Paraquat dichloride	10
2074502		Paraquat methosulfate	10
56382		Parathion	10
1114712	DE	Pebulate	1
40487421	DE	Pendimethalin	1
19624227		Pentaborane	1
608935		Pentachlorobenzene	1
608935		Pentachlorobenzene	10
76017		Pentachloroethane	10
87865		Pentachlorophenol	10
2570265		Pentadecylamine	100
504609		1,3-Pentadiene	100
109660	DE	Pentane	F 1000**
109671	DE	1-Pentene	F 1000**
646048	DE	2-Pentene, (E)-	F 1000**
627203	DE	2-Pentene, (Z)-	F 1000**
57330	DE	Pentobarbital sodium	100
79210		Peracetic acid	100
7601903	DE	Perchloric acid	1000
594423		Perchloromethyl mercaptan	100
7616946		Perchloryl fluoride	100
52645531	DE	Permethrin	100
62442		Phenacetin	100
85018		Phenanthrene	5000
108952		Phenol	1000
64006		Phenol, 3-(1-methylethyl)-, methylcarbamate	1

4418660		Phenol, 2,2'-thiobis[4-chloro-6-methyl-	100
26002802	DE	Phenothrin	100
58366		Phenoxarsine, 10,10'-oxydi-	500
95545	DE	1,2-Phenylenediamine	100
108452		1,3-Phenylenediamine	100
106503		p-Phenylenediamine	5000
615281	DE	1,2-Phenylenediamine dihydrochloride	100
624180	DE	1,4-Phenylenediamine dihydrochloride	100
123615	DE	1,3-Phenylene diisocyanate	100
104494	DE	1,4-Phenylene diisocyanate	100
59881		Phenylhydrazine hydrochloride	1000
62384		Phenylmercuric acetate	100
90437	DE	2-Phenylphenol	100
2097190		Phenylsilatrane	100
103855		Phenylthiourea	100
57410	DE	Phenytol	10
298022		Phorate	10
4104147		Phosacetim	100
947024		Phosfolan	100
75445		Phosgene	10
732116		Phosmet	10
13171216		Phosphamidon	100
7803512		Phosphine	100
2703131		Phosphonothioic acid, methyl-, O-ethyl O-(4-(methylthio)phenyl) ester	500
50782699		Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) O-ethyl ester	100
2665307		Phosphonothioic acid, methyl-, O-(4-nitrophenyl) O-phenyl ester	500
7664382		Phosphoric acid	5000
3254635		Phosphoric acid, dimethyl 4-(methylthio) phenyl ester	500
2587908		Phosphorothioic acid, O,O-dimethyl-5-(2-(methylthio)ethyl)ester	500
7723140		Phosphorus	1
10025873		Phosphorus oxychloride	1000
10026138		Phosphorus pentachloride	500
1314563		Phosphorus pentoxide	1

7719122		Phosphorus trichloride	1000
85449		Phthalic anhydride	5000
57476		Physostigmine	1
57647		Physostigmine, salicylate (1:1)	1
1918021	DE	Picloram	100
88891	DE	Picric acid	100
124878		Picrotoxin	500
110894		Piperidine	1000
120547	DE	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	1
51036	DE	Piperonyl butoxide	100
23505411		Pirimifos-ethyl	1000
29232937	DE	Pirimiphos methyl	100
1336363		Polychlorinated biphenyls	1
9016879	DE	Polymeric diphenylmethane diisocyanate	100
7784410		Potassium arsenate	1
10124502		Potassium arsenite	1
7778509		Potassium bichromate	10
7758012	DE	Potassium bromate	10
7789006		Potassium chromate	10
151508		Potassium cyanide	10
128030		Potassium dimethyldithiocarbamate	1
1310583		Potassium hydroxide	1000
51026289	DE	Potassium N-hydroxymethyl-N-methyldithiocarbamate	1
137417	DE	Potassium N-methyldithiocarbamate	1
7722647		Potassium permanganate	100
506616		Potassium silver cyanide	1
41198087	DE	Profenofos	100
2631370		Promecarb	1
7287196	DE	Prometryn	100
23950585		Pronamide	5000
1918167	DE	Propachlor	100
463490	DE	Propadiene	F 1000**
74986	DE	Propane	F 1000**
107120		Propanenitrile	10
1120714		Propane sultone	10
709988	DE	Propanil	100
2312358		Propargite	10

# FINAL REGULATIONS

145

107197		Propargyl alcohol	1000
106967		Propargyl bromide	1
31218834	DE	Propetamphos	100
122429		Propham	1
60207901	DE	Propiconazole	100
57578		beta-Propiolactone	10
123386		Propionaldehyde	1000
79094		Propionic acid	5000
123626		Propionic anhydride	5000
70699		Propiophenone, 4'-amino	100
114261		Propoxur	100
627134	DE	m-Propyl nitrate	500
107108		n-Propylamine	5000
115071	DE	Propylene	F 1000**
75569		Propylene oxide	100
75558		Propyleneimine	1
74997	DE	Propyne	F 1000**
2275185		Prothoate	100
129000		Pyrene	5000
121299		Pyrethrins	1
121211		Pyrethrins	1
8003347		Pyrethrins	1
110861		Pyridine	1000
140761		Pyridine, 2-methyl-5-vinyl-	500
1124330		Pyridine, 4-nitro-, 1-oxide	500
53558251		Pyriminil	100
91225		Quinoline	5000
106514		Quinone	10
82688		Quintozene	100
76578148	DE	Quizalofop-ethyl	100
50555		Reserpine	5000
10453868	DE	Resmethrin	100
108463		Resorcinol	5000
81072		Saccharin and salts	100
94597		Safrole	100
14167181		Salcomine	500
107448		Sarin	1
7783008		Selenious acid	10

12039520		Selenious acid, dithallium(1+) salt	1000
7782492		Selenium	100
7783791		Selenium hexafluoride	10
7446084		Selenium oxide	10
7791233		Selenium oxychloride	500
7488564		Selenium sulfide	10
144343	DE	Selenium, tetrakis(dimethyldithiocarbamate)	1
630104		Selenourea	1000
563417		Semicarbazide hydrochloride	1000
74051802	DE	Sethoxydim	100
7803625	DE	Silane	F 1000**
3037727		Silane, (4-aminobutyl)diethoxymethyl-	1000
7440224		Silver	1000
506649		Silver cyanide	1
7761888		Silver nitrate	1
122349	DE	Simazine	100
7440235		Sodium	10
7631892		Sodium arsenate	1
7784465		Sodium arsenite	1
26628228		Sodium azide (Na(N3))	1000
10588019		Sodium bichromate	10
1333831		Sodium bifluoride	100
7631905		Sodium bisulfite	5000
124652		Sodium cacodylate	100
7775113		Sodium chromate	10
143339		Sodium cyanide	10
1982690	DE	Sodium dicamba	100
128041	DE	Sodium dimethyldithiocarbamate	1
25155300		Sodium dodecylbenzenesulfonate	1000
7681494		Sodium fluoride	1000
62748		Sodium fluoroacetate	10
16721805		Sodium hydrosulfide	5000
1310732		Sodium hydroxide	1000
10022705		Sodium hypochlorite	100
7681529		Sodium hypochlorite	100
124414		Sodium methylate	1000
7632000		Sodium nitrite	100

131522		Sodium pentachlorophenate	100
132274	DE	Sodium o-phenylphenoxide	10
7558794		Sodium phosphate, dibasic	5000
10140655		Sodium phosphate, dibasic	5000
10039324		Sodium phosphate, dibasic	5000
7785844		Sodium phosphate, tribasic	5000
10124568		Sodium phosphate, tribasic	5000
7601549		Sodium phosphate, tribasic	5000
10361894		Sodium phosphate, tribasic	5000
7758294		Sodium phosphate, tribasic	5000
10101890		Sodium phosphate, tribasic	5000
10028247		Sodium Phosphate, dibasic	5000
13410010		Sodium selenate	100
10102188		Sodium selenite	100
7782823		Sodium selenite	100
10102202		Sodium tellurite	500
900958		Stannane, acetoxytriphenyl-	500
7803523		Stibine	10
18883664		Streptozotocin	1
7789062		Strontium chromate	10
57249		Strychnine	10
57249		Strychnine, and salts	10
60413		Strychnine, sulfate	10
100425		Styrene	1000
96093		Styrene oxide	100
95067	DE	Sulfallate	1
3689245		Sulfotep	100
3569571		Sulfoxide, 3-chloropropyl octyl	500
7446095		Sulfur dioxide	<del>400</del> 500
7664939		Sulfuric acid	1000
12771083		Sulfur monochloride	1000
5714227		Sulfur pentafluoride	10
1314803		Sulfur phosphide	100
7783600		Sulfur tetrafluoride	10
7446119	DE	Sulfur trioxide	20
2699798	DE	Sulfuryl fluoride	100
35400432	DE	Sulprofos	100
93765		2,4,5-T acid	1000

3813147		2,4,5-T amines	5000
6369966		2,4,5-T amines	5000
6369977		2,4,5-T amines	5000
2008460		2,4,5-T amines	5000
1319728		2,4,5-T amines	5000
61792072		2,4,5-T esters	1000
25168154		2,4,5-T esters	1000
93798		2,4,5-T esters	1000
1928478		2,4,5-T esters	1000
2545597		2,4,5-T esters	1000
13560991		2,4,5-T salts	1000
77816		Tabun	10
34014181	DE	Tebuthiuron	100
13494809		Tellurium	1
7783804		Tellurium hexafluoride	10
3383968	DE	Temephos	100
5902512	DE	Terbacil	100
13071799		Terbufos	100
79947	DE	Tetrabromobisphenol A	1
1634022	DE	Tetrabutylthiuram disulfide	1
95943		1,2,4,5-Tetrachlorobenzene & Isomers	5000
1746016		2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1
630206		1,1,1,2-Tetrachloroethane	100
79345		1,1,2,2-Tetrachloroethane	100
127184		Tetrachloroethylene	100
354143	DE	1,1,2,2-Tetrachloro-1-fluoroethane	100
354110	DE	1,1,1,2-Tetrachloro-2-fluoroethane	100
58902		2,3,4,6-Tetrachlorophenol	10
961115	DE	Tetrachlorvinphos	100
64755	DE	Tetracycline hydrochloride	100
78002		Tetraethyl lead	10
107493		Tetraethyl pyrophosphate	10
597648		Tetraethyltin	100
116143	DE	Tetrafluoroethylene	F 1000**
10086472		Tetrafluoro hydrazine	100
7696120	DE	Tetramethrin	100
75741		Tetramethyllead	100
75763	DE	Tetramethylsilane	F 1000**

# FINAL REGULATIONS

147

509148		Tetranitromethane	10
1314325		Thallic oxide	100
7440280		Thallium	1000
563688		Thallium(I) acetate	100
10102451		Thallium(I) nitrate	100
10031591		Thallium sulfate	100
7446186		Thallium(I) sulfate	100
6533739		Thalious carbonate	100
7791120		Thalious chloride	100
2757188		Thalious malonate	100
148798	DE	Thiabendazole	100
62555		Thioacetamide	10
28249776	DE	Thiobencarb	100
2231574		Thiocarbazide	1000
139651	DE	4,4'-Thiodianiline	10
59669260		Thiodicarb	1
39196184		Thiofanox	100
297972		Thionazin	100
7719097		Thionyl chloride	10
23564069	DE	Thiophanate ethyl	100
23564058		Thiophanate-methyl	1
108985		Thiophenol	100
79196		Thiosemicarbazide	100
62566		Thiourea	10
5344821		Thiourea, (2-chlorophenyl)-	100
614788		Thiourea, (2-methylphenyl)-	500
137268		Thiram	10
1314201	DE	Thorium dioxide	100
7550450		Titanium tetrachloride	<del>400</del> 1000
108883		Toluene	1000
584849		Toluene-2,4-diisocyanate	100
91087		Toluene-2,6-diisocyanate	100
26471625		Toluene diisocyanate (unspecified isomer)	100
95534		o-Toluidine	100
106490		p-Toluidine	100
636215		o-Toluidine hydrochloride	100
8001352		Toxaphene	1
32534955		2,4,5-TP esters	100

93721		2,4,5-TP acid	100
43121433	DE	Triadimefon	100
2303175		Triallate	1
1031476		Triamiphos	500
68768		Triaziquone	100
24017478		Triazofos	500
10120048	DE	Tribenuron methyl	100
0			
1983104	DE	Tributyltin fluoride	100
2155706	DE	Tributyltin methacrylate	100
78488		S,S,S-Tributyltrithiophosphate	100
52686		Trichlorfon	100
76028		Trichloroacetyl chloride	500
120821		1,2,4-Trichlorobenzene & Isomers	100
1558254		Trichloro(chloromethyl)silane	10
27137855		Trichloro(dichlorophenyl)silane	500
71556		1,1,1-Trichloroethane	1000
79005		1,1,2-Trichloroethane	100
79016		Trichloroethylene	100
115219		Trichloroethylsilane	500
75694		Trichlorofluoromethane	5000
327980		Trichloronate	500
25167822		Trichlorophenol	10
15950660		2,3,4-Trichlorophenol	10
933788		2,3,5-Trichlorophenol	10
933755		2,3,6-Trichlorophenol	10
95954		2,4,5-Trichlorophenol	10
88062		2,4,6-Trichlorophenol	10
609198		3,4,5-Trichlorophenol	10
98135		Trichlorophenylsilane	500
96184	DE	1,2,3-Trichloropropane	10
10025782	DE	Trichlorosilane	F 1000**
57213691	DE	Triclopyr triethylammonium salt	100
27323417		Triethanolamine dodecylbenzene sulfonate	1000
998301		Triethoxysilane	500
121448		Triethylamine	5000
79389	DE	Trifluorochloroethylene	F 1000**
1582098		Trifluralin	10

26644462		Triforine	100
2487903		Trimethoxysilane	10
75503		Trimethylamine	100
95636	DE	1,2,4-Trimethylbenzene	100
75774		Trimethylchlorosilane	1000
16938220	DE	2,2,4-Trimethylhexamethylene diisocyanate	100
15646965	DE	2,4,4-Trimethylhexamethylene diisocyanate	100
824113		Trimethylolpropane phosphite	100
540841		2,2,4-Trimethylpentane	1000
2655154	DE	2,3,5-Trimethylphenyl methylcarbamate	100
1066451		Trimethyltin chloride	500
	DE	1,2,4-Trinitrobenzene	500
99354		1,3,5-Trinitrobenzene	10
602293	DE	2,3,4-Trinitrotoluene	500
	DE	2,3,5-Trinitrotoluene	500
	DE	2,3,6-Trinitrotoluene	500
610253	DE	2,4,5-Trinitrotoluene	500
118967	DE	2,4,6-Trinitrotoluene	500
	DE	3,4,5-Trinitrotoluene	500
639587		Triphenyltin chloride	500
76879	DE	Triphenyltin hydroxide	1000
555771		Tris(2-chloroethyl)amine	100
126727		<del>Ethanamine, 1,1-dimethyl-2-phenyl</del> <del>Tris (2,3-dibromopropyl) phosphate</del>	10
72571		Trypan blue	10
66751		Uracil mustard	10
541093		Uranyl acetate	100
10102064		Uranyl nitrate	100
36478769		Uranyl nitrate	100
51796		Urethane	100
2001958		Valinomycin	1000
7440622	DE	Vanadium (except when contained in an alloy)	100
1314621		Vanadium pentoxide	1000
27774136		Vanadyl sulfate	1000
50471448	DE	Vinclozolin	100
108054		Vinyl acetate	5000
689974	DE	Vinyl acetylene	F 1000**

593602		Vinyl bromide	100
75014		Vinyl chloride	1
109922	DE	Vinyl ethyl ether	F 1000**
75025	DE	Vinyl fluoride	F 1000**
75354		Vinylidene chloride	100
75387	DE	Vinylidene fluoride	F 1000**
107255	DE	Vinyl methyl ether	F 1000**
81812		Warfarin	100
81812		Warfarin, & salts, conc.>0.3%	100
129066		Warfarin sodium	100
108383		m-Xylene	100
95476		o-Xylene	100
106423		p-Xylene	100
1330207		Xylene	100
1300716		Xylenol	1000
87627	DE	2,6-Xylidine	10
28347139		Xylylene dichloride	100
7440666		Zinc	1000
557346		Zinc acetate	1000
14639975		Zinc ammonium chloride	1000
14639986		Zinc ammonium chloride	1000
52628258		Zinc ammonium chloride	1000
1332076		Zinc borate	1000
7699458		Zinc bromide	1000
3486359		Zinc carbonate	1000
7646857		Zinc chloride	1000
557211		Zinc cyanide	10
58270089		Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyloxy)imino) Pentanenitrile)-, (T-4)-	100
7783495		Zinc fluoride	1000
557415		Zinc formate	1000
7779864		Zinc hydrosulfite	1000
7779886		Zinc nitrate	1000
127822		Zinc phenolsulfonate	5000
1314847		Zinc phosphide	100
16871719		Zinc silicofluoride	5000
7733020		Zinc sulfate	1000

12122677	DE	Zineb	100
137304		Ziram	1
13746899		Zirconium nitrate	5000
16923958		Zirconium potassium fluoride	1000
14644612		Zirconium sulfate	5000
10026116		Zirconium tetrachloride	5000

This consolidated chemical list includes chemicals subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Chemicals listed under 112(r) of the Clean Air Act (CAA), Section 311 of the Clean Water Act of 1980, State of Delaware's Accidental Release Prevention Regulation, and EPCRA Section 313 are included with Delaware Reportable Quantities (DRQs). Some substances are listed as commonly known synonyms more than once or with different CAS numbers. For other synonyms and CAS numbers search the EPA ~~Chemical Substance~~ Registry System (~~CSR~~) (~~SRS~~) under chemical names or CAS numbers. The EPA ~~CSR~~ (~~SRS~~) search page can be found on the internet at: [http://oaspub.epa.gov/srs/SEARCH\\$.STARTUP](http://oaspub.epa.gov/srs/SEARCH$.STARTUP)

Note: Substances with no DE must also be reported to the National Reporting Center (NRC) under federal reporting requirements with reportable quantities equal to the DRQ. The column with designation 'DE' means that the substance DRQ does not agree with the federal reportable quantity under CERCLA or EPCRA requirements to report to the (NRC). Check the EPA Lists of Lists or the NRC internet webpage to determine if and what reportable release quantity must be reported to the NRC independently of the State of Delaware Reporting requirements.

\* No mandatory written report is required under Section 2.5 of the 6028 Reporting Regulation.

\*\* F = Flammable substances Delaware reportable quantities apply for short term releases (immediate to one hour).

### Section 3 Table A

#### RCRA Waste Streams and Unlisted Hazardous Wastes

RCRA Codes	NAME	DRQ
D001	Unlisted hazardous wastes characteristic of ignitability	100
D002	Unlisted hazardous wastes characteristic of corrosivity	100

D003	Unlisted hazardous wastes characteristic of reactivity	100
D004	Arsenic	1
D005	Barium	1000
D006	Cadmium	10
D007	Chromium	10
D008	Lead	10
D009	Mercury	1
D010	Selenium	10
D011	Silver	1
D012	Endrin	1
D013	Lindane	1
D014	Methoxychlor	1
D015	Toxaphene	1
D016	2,4-D	100
D017	2,4,5-TP	100
D018	Benzene	10
D019	Carbon tetrachloride	10
D020	Chlordane	1
D021	Chlorobenzene	100
D022	Chloroform	10
D023	o-Cresol	100
D024	m-Cresol	100
D025	p-Cresol	100
D026	Cresol	100
D027	1,4-Dichlorobenzene	100
D028	1,2-Dichloroethane	100
D029	1,1-Dichloroethylene	100
D030	2,4-Dinitrotoluene	10
D031	Heptachlor (and epoxide)	1
D032	Hexachlorobenzene	10
D033	Hexachlorobutadiene	1
D034	Hexachloroethane	100

D035	Methyl ethyl ketone	5000
D036	Nitrobenzene	1000
D037	Pentachlorophenol	10
D038	Pyridine	1000
D039	Tetrachloroethylene	100
D040	Trichloroethylene	100
D041	2,4,5-Trichlorophenol	10
D042	2,4,6-Trichlorophenol	10
D043	Vinyl chloride	1
F001	Spent halogenated solvents used in degreasing	10
F001a	(a) Tetrachloroethylene (CAS No. 127-18-4, RCRA Waste No. U210)	100
F001b	(b) Trichloroethylene (CAS No. 79-01-6, RCRA Waste No. U228)	100
F001c	(c) Methylene chloride (CAS No. 75-09-2, RCRA Waste No. U080)	1000
F001d	(d) 1,1,1-Trichloroethane (CAS No. 71-55-6, RCRA Waste No. U226)	1000
F001e	(e) Carbon tetrachloride (CAS No. 56-23-5, RCRA Waste No. U211)	10
F001f	(f) Chlorinated fluorocarbons	5000
F002	Spent halogenated solvents	10
F002a	(a) Tetrachloroethylene (CAS No. 127-18-4, RCRA Waste No. U210)	100
F002b	(b) Methylene chloride (CAS No. 75-09-2, RCRA Waste No. U080)	1000
F002c	(c) Trichloroethylene (CAS No. 79-01-6, RCRA Waste No. U228)	100
F002d	(d) 1,1,1-Trichloroethane (CAS No. 71-55-6, RCRA Waste No. U226)	1000
F002e	(e) Chlorobenzene (CAS No. 108-90-7, RCRA Waste No. U037)	100
F002f	(f) 1,1,2-Trichloro-1,2,2-trifluoroethane (CAS No. 76-13-1)	5000
F002g	(g) o-Dichlorobenzene (CAS No. 95-50-1, RCRA Waste No. U070)	100
F002h	(h) Trichlorofluoromethane (CAS No. 75-69-4, RCRA Waste No. U121)	5000
F002i	(i) 1,1,2-Trichloroethane (CAS No. 79-00-5, RCRA Waste No. U227)	100
F003	Spent non-halogenated solvents and still bottoms from recovery:	100

F003a	(a) Xylene (CAS No. 1330-20-7)	1000
F003b	(b) Acetone (CAS No. 67-64-12)	5000
F003c	(c) Ethyl acetate (CAS No. 141-78-6)	5000
F003d	(d) Ethylbenzene (CAS No. 100-41-4)	1000
F003e	(e) Ethyl ether (CAS No. 60-29-7)	100
F003f	(f) Methyl isobutyl ketone (CAS No. 108-10-1,)	5000
F003g	(g) n-Butyl alcohol (CAS No. 71-36-3)	5000
F003h	(h) Cyclohexanone (CAS No. 108-94-1)	5000
F003i	(i) Methanol (CAS No. 67-56-1, RCRA Waste No. U154)	5000
F004	Spent non-halogenated solvents and still bottoms from recovery:	100
F004a	(a) Cresols/cresylic acid (CAS No. 1319-77-3, RCRA Waste No. U052)	100
F004b	(b) Nitrobenzene (CAS No. 98-95-3, RCRA Waste No. U169)	1000
F005	Spent non-halogenated solvents and still bottoms from recovery:	100
F005a	(a) Toluene (CAS No. 108-88-3, RCRA Waste No. U220)	1000
F005b	(b) Methyl ethyl ketone (CAS No. 78-93-3, RCRA Waste No. U159)	5000
F005c	(c) Carbon disulfide (CAS No. 75-15-0, RCRA Waste No. P022)	100
F005d	(d) Isobutanol (CAS No. 78-83-1, RCRA Waste No. U140)	5000
F005e	(e) Pyridine (CAS No. 110-86-1, RCRA Waste No. U196)	1000
F006	Wastewater treatment sludges from electroplating operations (w/some exceptions)	10
F007	Spent cyanide plating bath solns. from electroplating	10
F008	Plating bath residues from electroplating where cyanides are used	10
F009	Spent stripping/cleaning bath solns. from electroplating where cyanides are used	10
F010	Quenching bath residues from metal heat treating where cyanides are used	10
F011	Spent cyanide soln. from salt bath pot cleaning from metal heat treating	10
F012	Quenching wastewater sludges from metal heat treating where cyanides are used	10
F019	Wastewater treatment sludges from chemical conversion aluminum coating	10

F020	Wastes from prod. or use of tri/tetrachlorophenol or derivative intermediates	1
F021	Wastes from prod. or use of pentachlorophenol or intermediates for derivatives	1
F022	Wastes from use of tetra/penta/hexachlorobenzenes under alkaline conditions	1
F023	Wastes from mat. prod. on equip. previously used for tri/tetrachlorophenol	1
F024	Wastes from production of chlorinated aliphatic hydrocarbons (C1-C5)	1
F025	Lights ends, filters from prod. of chlorinated aliphatic hydrocarbons (C1-C5)	1
F026	Waste from equipment previously used to prod. tetra/penta/hexachlorobenzenes	1
F027	Discarded formulations containing tri/tetra/pentachlorophenols or derivatives	1
F028	Residues from incineration of soil contaminated w/ F020,F021,F022,F023,F026,F027	1
F032	Wastewaters, process residuals from wood preserving using chlorophenolic solns.	1
F034	Wastewaters, process residuals from wood preserving using creosote formulations	1
F035	Wastewaters, process residuals from wood preserving using arsenic or chromium	1
F037	Petroleum refinery primary oil/water/solids separation sludge	1
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge	1
K001	Wastewater treatment sludge from creosote/pentachlorophenol wood preserving	1
K002	Wastewater treatment sludge from prod. of chrome yellow and orange pigments	10
K003	Wastewater treatment sludge from prod. of molybdate orange pigments	10
K004	Wastewater treatment sludge from prod. of zinc yellow pigments	10
K005	Wastewater treatment sludge from prod. of chrome green pigments	10
K006	Wastewater treatment sludge from prod. of chrome oxide green pigments	10
K007	Wastewater treatment sludge from prod. of iron blue pigments	10
K008	Oven residue from prod. of chrome oxide green pigments	10
K009	Dist. bottoms from prod. of acetaldehyde from ethylene	10

K010	Dist. side cuts from prod. of acetaldehyde from ethylene	10
K011	Bottom stream from wastewater stripper in acrylonitrile prod.	10
K013	Bottom stream from acetonitrile column in acrylonitrile prod.	10
K014	Bottoms from acetonitrile purification column in acrylonitrile prod.	5000
K015	Still bottoms from the dist. of benzyl chloride	10
K016	Heavy ends or dist. residues from prod. of carbon tetrachloride	1
K017	Heavy ends from the purification column in epichlorohydrin prod.	10
K018	Heavy ends from the fractionation column in ethyl chloride prod.	1
K019	Heavy ends from the dist. of ethylene dichloride during its prod.	1
K020	Heavy ends from the dist. of vinyl chloride during prod. of the monomer	1
K021	Aqueous spent antimony catalyst waste from fluoromethanes prod.	10
K022	Dist. bottom tars from prod. of phenol/acetone from cumene	1
K023	Dist. light ends from prod. of phthalic anhydride from naphthalene	5000
K024	Dist. bottoms from prod. of phthalic anhydride from naphthalene	5000
K025	Dist. bottoms from prod. of nitrobenzene by nitration of benzene	10
K026	Stripping still tails from the prod. of methyl ethyl pyridines	1000
K027	Centrifuge/dist. residues from toluene diisocyanate prod.	10
K028	Spent catalyst from hydrochlorinator reactor in prod. of 1,1,1-trichloroethane	1
K029	Waste from product steam stripper in prod. of 1,1,1-trichloroethane	1
K030	Column bottoms/heavy ends from prod. of trichloroethylene and perchloroethylene	1
K031	By-product salts generated in the prod. of MSMA and cacodylic acid	1
K032	Wastewater treatment sludge from the prod. of chlordane	10
K033	Wastewater/scrubwater from chlorination of cyclopentadiene in chlordane prod.	10
K034	Filter solids from filtration of hexachlorocyclopentadiene in chlordane prod.	10

K035	Wastewater treatment sludges from the prod. of creosote	1
K036	Still bottoms from toluene reclamation distillation in disulfoton prod.	1
K037	Wastewater treatment sludges from the prod. of disulfoton	1
K038	Wastewater from the washing and stripping of phorate production	10
K039	Filter cake from filtration of diethylphosphorodithioic acid in phorate prod.	10
K040	Wastewater treatment sludge from the prod. of phorate	10
K041	Wastewater treatment sludge from the prod. of toxaphene	1
K042	Heavy ends/residues from dist. of tetrachlorobenzene in 2,4,5-T prod.	10
K043	2,6-Dichlorophenol waste from the prod. of 2,4-D	10
K044	Wastewater treatment sludge from manuf. and processing of explosives	10
K045	Spent carbon from treatment of wastewater containing explosives	10
K046	Wastewater sludge from manuf.,formulating,loading of lead-based initiating compd	10
K047	Pink/red water from TNT operations	10
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	10
K049	Slop oil emulsion solids from the petroleum refining industry	10
K050	Heat exchanger bundle cleaning sludge from petroleum refining industry	10
K051	API separator sludge from the petroleum refining industry	10
K052	Tank bottoms (leaded) from the petroleum refining industry	10
K060	Ammonia still lime sludge from coking operations	1
K061	Emission control dust/sludge from primary prod. of steel in electric furnaces	10
K062	Spent pickle liquor generated by steel finishing (SIC codes 331 and 332)	10
K064	Acid plant blowdown slurry/sludge from blowdown slurry from primary copper prod.	10
K065	Surface impoundment solids at primary lead smelting facilities	10
K066	Sludge from treatment of wastewater/acid plant blowdown from primary zinc prod.	10

K069	Emission control dust/sludge from secondary lead smelting	10
K071	Brine purification muds from mercury cell process in chlorine production	1
K073	Chlorinated hydrocarbon waste from diaphragm cell process in chlorine production	10
K083	Distillation bottoms from aniline extraction	100
K084	Wastewater sludges from prod. of veterinary pharm. from arsenic compds.	1
K085	Distillation or fractionation column bottoms in prod. of chlorobenzenes	10
K086	Wastes/sludges from prod. of inks from chromium and lead-containing substances	10
K087	Decanter tank tar sludge from coking operations	100
K088	Spent potliners from primary aluminum reduction	10
K090	Emission control dust/sludge from ferrochromiumsilicon prod.	10
K091	Emission control dust/sludge from ferrochromium prod.	10
K093	Dist. light ends from prod. of phthalic anhydride by ortho-xylene	5000
K094	Dist. bottoms in prod. of phthalic anhydride by ortho-xylene	5000
K095	Distillation bottoms in prod. of 1,1,1-trichloroethane	100
K096	Heavy ends from dist. column in prod. of 1,1,1-trichloroethane	100
K097	Vacuum stripper discharge from the chlordane chlorinator in prod. of chlordane	1
K098	Untreated process wastewater from the prod. of toxaphene	1
K099	Untreated wastewater from the prod. of 2,4-D	10
K100	Waste leaching soln from emission control dust/sludge in secondary lead smelting	10
K101	Dist. tar residue from aniline in prod. of veterinary pharm. from arsenic compd.	1
K102	Residue from activated carbon in prod. of veterinary pharm. from arsenic compds.	1
K103	Process residues from aniline extraction from the prod. of aniline	100
K104	Combined wastewater streams generated from prod. of nitrobenzene/aniline	10
K105	Aqueous stream from washing in prod. of chlorobenzenes	10
K106	Wastewater treatment sludge from mercury cell process in chlorine prod.	1

K107	Column bottoms from separation in prod. of UDMH from carboxylic acid hydrazides	10
K108	Condensed column overheads and vent gas from prod. of UDMH from -COOH hydrazides	10
K109	Spent filter cartridges from purif. of UDMH prod. from carboxylic acid hydrazides	10
K110	Condensed column overheads from separation in UDMH prod. from -COOH hydrazides	10
K111	Product washwaters from prod. of dinitrotoluene via nitration of toluene	10
K112	Reaction by-product water from drying in toluenediamine prod from dinitrotoluene	10
K113	Condensed liquid light ends from purification of toluenediamine during its prod.	10
K114	Vicinals from purification of toluenediamine during its prod from dinitrotoluene	10
K115	Heavy ends from toluenediamine purification during prod. from dinitrotoluene	10
K116	Organic condensate from solvent recovery system in prod. of toluene diisocyanate	10
K117	Wastewater from vent gas scrubber in ethylene bromide prod by ethene bromination	1
K118	Spent absorbent solids in purification of ethylene dibromide in its prod.	1
K123	Process waterwater from the prod. of ethylenebisdithiocarbamic acid and salts	10
K124	Reactor vent scrubber water from prod of ethylenebisdithiocarbamic acid and salts	10
K125	Filtration/other solids from prod. of ethylenebisdithiocarbamic acid and salts	10
K126	Dust/sweepings from the prod. of ethylenebisdithiocarbamic acid and salts	10
K131	Wastewater and spent sulfuric acid from the prod. of methyl bromide	100
K132	Spent absorbent and wastewater solids from the prod. of methyl bromide	1000
K136	Still bottoms from ethylene dibromide purif. in prod. by ethene bromination	1
K141	Process residues from coal tar recovery in coking	1
K142	Tar storage tank residues from coke prod. from coal or recovery of coke by-prods	1
K143	Process residues from recovery of light oil in coking	1
K144	Wastewater residues from light oil refining in coking	1
K145	Residues from naphthalene collection and recovery from coke by-products	1

K147	Tar storage tank residues from coal tar refining in coking	1
K148	Residues from coal tar distillation, including still bottoms, in coking	1
K149	Distillation bottoms from the prod. of chlorinated toluenes/benzoyl chlorides	10
K150	Organic residuals from Cl gas and HCl recovery from chlorinated toluene prod.	10
K151	Wastewater treatment sludge from production of chlorotoluenes/benzoyl chlorides	10
K156	Organic waste from production of carbamates and carbamoyl oximes	1
K157	Wastewaters from production of carbamates and carbamoyl oximes (not sludges)	1
K158	Bag house dusts & filter/separation solids from prod of carbamates, carb oximes	1
K159	Organics from treatment of thiocarbamate waste	1
K160	Solids from production of thiocarbamates and treatment of thiocarbamate wastes	1
K161	Purif. solids/bag house dust/sweepings from prod of dithiocarbamate acids/salts	1
K169	Crude oil storage tank sediment from petroleum operations	10
K170	Clarified slurry oil tank sediment from petroleum refining operations	1
K171	Spent hydrotreating catalyst from petroleum refining operations.	1
K172	Spent hydrorefining catalyst from petroleum refining operations.	1
K174	Wastewater treatment sludges from the production of vinyl chloride or ethylene dichloride monomer	1
K175	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer	1

Note: Delaware reportable quantities (DRQs) are based upon EPA RCRA waste streams and unlisted hazardous wastes reportable quantities (RQs) as published in EPA List of Lists as EPA publication Number: EPA 550-B-01-003.

The term hazardous waste substance includes RCRA listed and characteristic hazardous wastes. The establishments of RQs for hazardous waste differs from the methodology applied to individual hazardous substances, as the RQ for hazardous waste is based on the results of an analysis of hazardous constituents in the waste stream. When the RQ of each hazardous constituent is established, the lowest RQ of each of these constituents then becomes the

adjusted RQ for the waste stream. In the event there are constituents in the hazardous waste that are not considered hazardous substances, a reference RQ is developed for these constituents in order to assign an appropriate RQ.

### DIVISION OF WATER RESOURCES

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

**Secretary's Order No. 2004-W-0031**

### Surface Water Quality Standards

#### I. Background

A public hearing was held on November 13, 2003 at the Department of Natural Resources and Environmental Control, ("Department" or "DNREC") in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware to hear testimony and receive comments on the proposed amendments to the *State of Delaware Surface Water Quality Standards, (as amended august 11, 1999)* ("WQS").

The Department held a public hearing on proposed revisions to the WQS on September 1, 1999. Following that hearing, which did not move forward with revisions, the Department began a comprehensive review of the WQS and developed proposed revisions based on comments received at that hearing and a workshop held on August 14, 2003. As part of the public participation process, the DNREC established a group of interested parties, kept them abreast of the regulatory process, and proposed amendments through a combination of email notices, internet postings of documents and relevant links, public notices, press releases and public workshops. During the workshop on August 14, 2003 in the DNREC auditorium, DNREC presented a draft markup of the proposed amendments based on comments received in the 1999 public hearing and 2003 workshop, a review of factors affecting human health criteria, EPA documents and staff recommendations. The latest proposed amendments to the WQS and notice of the public hearing were published in the *Delaware Register of Regulations*, Vol. 7, Issue 4, on October 1, 2003. The record demonstrates that proper notice of the hearing was provided as required by law.

Following the public hearing in November, DNREC prepared a Response to Comments document, which summarized each comment and provided the Department's response, which also contains a well-reasoned, proposed resolution of each issue based on the record. The Department also prepared a proposed final version of the amendments reflecting the public comment process.

#### II. Findings

1. Proper notice of the hearing was provided as required by law.
2. The Response to Comments provides a thorough and accurate summary of the record.
3. Included in the Response to Comments are well-reasoned conclusions which can serve as findings to support this Order and are incorporated herein for that purpose.
4. The proposed amendments, as revised to reflect comments in the record, are consistent with the requirements of the Federal Clean Water Act, and further the policies and purposes of 7 Del.C. Ch. 60.

#### III. Order

In view of the above findings and the public hearing record, it is hereby ordered that the proposed amendments to the *State of Delaware Surface Water Quality Standards* (as amended August 11, 1999) as revised through the latest public comment process, be promulgated.

#### IV. Reasons

The record shows that the proposed amendments are consistent with the policies and purposes of 7 Del.C. Chapter 60. The amendments are intended to be protective of the environment and water quality of the State of Delaware and be consistent with the Clean Water Act, its goals and enabling regulations.

John A. Hughes, Secretary

Date of Issuance: June 14, 2004

Effective Date of Regulatory Provisions: July 11, 2004

### SURFACE WATER QUALITY STANDARDS

#### Section 1: Intent

~~1.1 It is the policy of the Department to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.~~

~~1.2 Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.~~

~~1.3 Where existing facilities operating under a permit from this Department are required to reduce pollution concentrations or loadings due to the implementation of these surface water quality standards, a reasonable schedule for compliance may be granted in accordance with standards or requirements established in applicable statutes and regulations.~~

1.4 The Department intends to develop an agency-wide program to assess, manage, and communicate human health cancer risks from the major categories of environmental pollution under its jurisdiction. As a result of this activity, it may be necessary to adjust the upper bound worst case risk management level stated in Section 9.3(b)(i).

**Section 2: Definitions**

**Acute:** Involving a stimulus severe enough to rapidly induce an adverse response; in toxicity tests, an adverse response observed in 96 hours or less is typically considered acute. An acute effect is not always measured in terms of lethality; it can measure a variety of short term adverse effects.

**Additive effect:** The total effect of a mixture of pollutants which is equal to the arithmetic sum of the effects of the individual pollutants in the mixture.

**Agriculture:** The use of land and water in the production of food, fiber and timber products.

**Antagonistic effect:** The total effect of a mixture of pollutants which is less than the arithmetic sum of the effects of the individual pollutants in the mixture.

**Average:** Unless otherwise noted, the arithmetic mean of a representative group of samples for a specified parameter. Representativeness shall be determined through application of appropriate statistical techniques to data collected at times of critical ambient conditions, as determined on a parameter-by-parameter basis.

**Best Management Practice (BMP):** BMPs are methods, measures or practices that are determined by the Department to be reasonable and cost effective means for a person to meet certain, generally nonpoint source, pollution control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during or after pollution producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

**Best scientific judgement:** Findings, conclusions, or recommended actions which result from the application of logical reasoning and appropriate scientific principles and practices to available and relevant information on a particular situation.

**Bioavailability:** A measure of the physicochemical access of a pollutant to an organism.

**Biodegradation:** The biological decomposition of natural or synthetic organic materials by microorganisms.

**Carcinogen:** A substance that increases the risk of benign or malignant neoplasms (tumors) in humans or other animals. Carcinogens regulated through these Standards include but may not be limited to those toxic substances classified as Group A or Group B carcinogens as defined in 51 FR 185 (9/24/86).

**Chronic:** Involving a stimulus that produces an adverse response that lingers or continues for a relatively

long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of the organism. A chronic effect can be lethality, growth or reproductive impairment, or other longer term adverse effect.

**Clean Water Act:** 33 U.S.C. 1251 et. seq., as amended.

**Cold water fish use:** Protection of fish species (such as from the family Salmonidae) and other flora and fauna indigenous to a cold water habitat.

**Complete mix:** The concentration of a discharged pollutant varies by no more than 5% over the cross-sectional area of the receiving water at the point of discharge.

**Conservation plan:** A conservation plan is a record of land user decisions affecting land use and conservation treatment of natural resources including soil, water, air, plant, and animal resources. It is comprised of resource management systems which are groups of interrelated conservation practices (BMPs) and management measures formulated to protect, restore, or improve the resource base. Conservation plans are usually developed with the assistance of conservation districts using district BMP standards (ref: Field Office Technical Guide, USDA Soil Conservation Service).

**Control structure:** A dam, weir or other structure placed by man to regulate stream flow and/or create an impoundment.

**Critical flow:** A statistically determined minimum flow, which has a defined duration and recurrence interval.

**Degradation:** Any adverse change in water quality or existing uses.

**Department:** Delaware Department of Natural Resources and Environmental Control.

**Designated uses:** Categories of surface water utilization as defined in Section 10.

**Diadromous:** Describes fish which migrate to and from marine water and freshwater for the purpose of spawning.

**Discharge length scale:** The square root of the cross-sectional area of any discharge outlet.

**Dispersion:** A physical mixing process which results in the scattering of particles or dissolved materials in the water column.

**Early life stages:** Life stages for fish which include all embryonic and larval stages, and all juvenile forms to 30 days following hatching.

**Ephemeral:** Describes a stream which contains flowing water only for short periods following precipitation events.

**Excavated waters:** Waters of the State which are wholly human created. Such waters shall include but not be limited to upland basins with surface outlets, drainage and tax ditches which are ephemeral, and dug ponds.

**Existing use:** Any use of any waters of the State

which has, or likely has, occurred, or the water quality at any time has been satisfactory to support, on or after November 28, 1975.

**Fish, aquatic life and wildlife:** All animal and plant life found in Delaware, either indigenous or migratory, regardless of life stage or economic importance.

**Foam:** Frothy, generally stable, whitish mass of bubbles formed on or in the water upon agitation of the water.

**Fresh water:** Waters of the State which contain natural levels of salinity of 5 parts per thousand or less.

**Fresh water flow:** That flow which represents the amount of water passing a measurement point in a non-tidal system.

**Hydrolysis:** A reaction of a chemical with water which results in the cleavage of a chemical bond.

**Indigenous:** Native, or naturally growing, existing, or produced.

**Industrial Water Supply:** Any water that is protected for use for industrial purposes, including non-contact cooling water.

**Intake water:** Water used by a facility from surface water, groundwater, commercial, or other sources.

**Intermittent:** Describes a stream which contains flowing water for extended periods during a year, but does not carry flow at all times.

**Lethal concentration (LC):** The point estimate of the toxicant concentration that would be lethal to a given percentage of test organisms during a specific period.

**Marine water:** Waters of the State which contain natural levels of salinity in excess of 5 parts per thousand.

**Minimum Analytical Level:** The lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

**NPDES:** National Pollutant Discharge Elimination System as provided in the Clean Water Act.

**Natural conditions:** Water quality characteristics found or expected in the absence of human-induced pollution due to point or nonpoint sources.

**Net advective flow:** That flow which represents the difference between the amount of water passing a point in a tidal system on a flood tide and the subsequent ebb tide. It is approximately equal to the freshwater input to the system upstream of that point.

**Normal Corrosion:** An electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: Corrosion Data Survey - Metals Section, National Association of Corrosion Engineers, 1985, as updated from time to time) or, for applications not specifically addressed in the above reference, such other

reliable data.

**Normal Erosion:** The progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: Standard Practice for Liquid Impingement Erosion Testing, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard).

**Nuisance condition:** Any condition that, as a result of pollutant addition to a stream, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

**Nuisance species:** Any species of fish, other animal, or plant living in or near the water, the presence of which causes unreasonable interference with the designated uses of the waters or the uses of adjoining land areas. Nuisance species include but are not limited to filamentous and blue-green algae.

**Nutrient:** Any element or compound essential as a raw material for organism growth and development, including but not limited to nitrogen and phosphorus.

**One-hour average:** The arithmetic average of the samples collected during a continuous one-hour period.

**Overenrichment:** Excessive addition of nutrients to a water body, resulting in deterioration of designated uses of the waters.

**Perennial:** Describes a freshwater stream which contains flowing water at all times.

**Person:** Any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, or any interstate body.

**Photolysis:** A light-catalyzed degradation reaction that occurs when light strikes certain chemicals.

**Pollutant:** Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil and product chemicals, and industrial, municipal, and agricultural waste discharged into water.

**Practicable:** Available and capable of being done after taking into consideration cost and existing technology, as well as logistics in light of overall facility operations or project purposes.

**Primary contact recreation:** Any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming and water skiing).

**Propagation:** Reproduction of fish, aquatic life and wildlife within their natural environment.

**Public water supply:** Any waters of the State designated as public water supply in Section 10.

**Regulatory mixing zone:** A designated, mathematically defined portion of a receiving water body, in close proximity to a discharge, in which initial dilution, dispersion, and reaction of discharged pollutants occur. See Section 6 for details on use of term.

**Risk management level:** That level above which an assessed risk is unacceptable from a public health perspective.

**Scientifically Reasonable Request:** Any request that is based upon material, substantial, and relevant information and would be accepted as reasonable by most persons trained and competent in the subject of the request.

**Scum:** A thin layer of impurities which forms on the surface of waters of the State.

**Secondary contact recreation:** A water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water (examples include but are not limited to wading, boating, and fishing).

**Sedimentation:** The movement of solid particles and adsorbed chemicals toward the bottom of the water column under the influence of gravity.

**Shellfish:** Any species of fresh, brackish or salt water mollusk that is commonly considered to be edible. Typical edible mollusks include but are not limited to clams, mussels, oysters, scallops, and whelks.

**Stream basin:** A specified drainage area from which (in most cases) all waters exit through a single outlet.

**Surface water:** Water occurring generally on the surface of the earth.

**Synergistic effect:** The total effect of a mixture of pollutants which is greater than the arithmetic sum of the effects of the individual pollutants in the mixture.

**Systemic toxicant:** A toxic substance that has the ability to cause health effects within the body at sites distant from the entry point due to its absorption and distribution. Systemic toxicants are believed to have threshold concentrations or levels below which no health effects occur.

**Tidal:** Surface waters characterized by periodic rise and fall due to gravitational interactions between the sun, moon, and earth.

**Toxic substance:** Any substance or combination of substances including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in such organisms or their offspring.

**Toxicity:** The ability to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in organisms or their offspring.

**Toxicity test:** The means to determine the toxicity of a chemical or effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent.

**True daily mean:** The mean value for a parameter which accurately accounts for diurnal variations over one 24-hour period.

**Volatilization:** The loss of a chemical from the water column due to mass exchange across the air-water interface.

**Water distribution piping and appurtenances:** Pipes and piping systems, along with integral components thereof, which are used to convey water from one point to another.

**Water pollution:** Man-made or human-induced alteration of the chemical, physical, biological or radiological integrity of surface waters of the State.

**Waters of the State:**

(1) All surface waters of the State including but not limited to:

(a) Waters which are subject to the ebb and flow of the tide, including but not limited to estuaries, bays, and the Atlantic Ocean;

(b) All interstate waters, including interstate wetlands;

(c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d);

(2) Waste and stormwater treatment systems, including but not limited to treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not waters of the State.

**Waters of exceptional recreational or ecological significance (ERES):** Waters which are important, unique, or sensitive from a recreational and/or ecological perspective, but which may or may not have excellent water quality. Such waters shall normally have regional significance with respect to recreational use (fishing, swimming and boating), or have significant or widespread riverine, riparian, or wetland natural areas.

**Water quality:** The physical, chemical, and biological characteristics of water with respect to its suitability for a particular use. For the purposes of these Standards, water quality shall be assessed in terms of chemical composition, biological integrity, and physical habitat.

**Water-Quality-Based:** Generally refers to requirements for pollution control that are in excess of technology-based minimum requirements, including but not limited to those listed in Sections 301(b) and 306 of the

Clean Water Act. Such controls are designed to reduce pollutants to a level that will allow water quality standards to be attained where said standards would not be attained through application of the technology-based controls.

**Water quality criterion:** An element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

**Water quality standard:** A rule or limit defined herein which consists of a designated use or uses for waters of the State and water quality criteria for such waters based upon such designated uses.

**Wetlands:** Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

### Section 3: Antidegradation Policy

3.1 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

3.2 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected. In the case of waters of exceptional recreational or ecological significance, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the Department finds, after full satisfaction of public participation provisions of 7 Del. Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure maintenance of water quality adequate for full protection of existing uses. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

3.3 Where high quality waters constitute an outstanding

National resource, such as waters of National parks and wildlife refuges, existing quality shall be maintained and protected.

3.4 In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

3.5 The hearing requirement imposed by Subsections 3.2 above shall not be construed to impose a requirement for an additional public hearing where such a hearing is otherwise held pursuant to law, provided the requirements of this section are hereby met.

### Section 4: General Stream Criteria

4.1 All surface waters of the State (except as detailed in Sections 8 and 12) shall meet the following minimum criteria:

(a) Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human induced origin. Examples include but are not limited to the following:

(i) Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water,

(ii) Settleable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water,

(iii) Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature, that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result in dominance of nuisance species.

4.2 Certain waters of the State are subject to natural variations in salinity such that those waters meet the definition of fresh at some times and marine at other times. For such waters, the more stringent of fresh or marine water quality criteria or standards as detailed throughout this document shall apply at all times unless otherwise specified by the Department.

### Section 5: Exceptions, Modifications and Conditions

#### A. Exceptions and Modifications

5.1 Request for Removal of Designated Uses: The Department shall consider scientifically reasonable requests for removal of designated uses that are not existing uses for all or part of specific waters of the State. A request for removal of designated uses shall be deemed a scientifically reasonable request if it demonstrates that it is based upon a

sound scientific rationale, supported by substantial scientific and technical evidence and analysis, as to the existence of one or more of the factors listed below. If the Department finds any request for removal to be frivolous or to be flawed as to the methods used to obtain evidence or perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical or scientific methods employed, it may dismiss such request for removal without further action. If the Department determines that a scientifically reasonable request has been made, it shall make a preliminary determination as to the proposed change and hold a public hearing in accordance with 7 Del. Code Section 6006. Removals of designated use completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards. The Department shall consider the following factors relative to requests for removal of designated uses that are not existing uses:

(a) Where concentrations of substances existing under natural conditions prevent the attainment of the designated use;

(b) Where lack of water from natural, ephemeral, intermittent or low flow conditions or water levels, inclusive of existing or proposed discharge flows, prevents the attainment of the designated use;

(c) Human-caused conditions or sources of pollution prevent the attainment of the designated use and cannot be remedied or would cause more net environmental damage to correct than to leave in place. Evaluations conducted pursuant to this factor shall take account of both short-term and long-term effects on the environment;

(d) Dams, diversions or other types of permitted or otherwise legal hydrologic modifications prevent the attainment of the designated use;

(e) Physical conditions related to the natural features of the water body, and related to water quality, that prevent attainment of the fish and aquatic life propagation designated use;

(f) Controls more stringent than those required by Sections 301 (b) and 306 of the Clean Water Act would result in substantial and widespread adverse economic and social impact.

5.2 ~~Request for Modification of Water Quality Criteria:~~ The Department shall consider scientifically reasonable requests for modification of water quality criteria contained herein for portions of specific waters of the State. A request for modification shall be deemed to be a scientifically reasonable request if it is based upon a sound rationale, and supported by substantial scientific evidence and analysis. This evidence and analysis must demonstrate the existence of site-specific differences in the chemical, physical, or biological characteristics of the surface water, and must propose alternate site-specific water quality

criteria. Scientific studies for the development of these alternate criteria shall be designed and conducted in accordance with the guidelines set forth in the Water Quality Standards Handbook, (U.S. EPA, 1983) or other scientifically defensible methodologies approved by the Department. If the Department finds any request for modification to be frivolous, to be flawed as to the methods used to obtain evidence and to perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical and scientific methods employed, or to contain reasonable evidence that a reduction in the number, quality, or river or stream mileage of designated uses would occur, it may dismiss such request for modification without further action. If the Department determines that a scientifically reasonable request has been made, the Department shall make a preliminary determination as to the proposed change and shall hold a public hearing in accordance with 7 Del. Code Section 6006. If the Department determines that a scientifically reasonable request has been made pursuant to this Section and such request could result in a change in discharge limits, then the public hearings for the discharge limitation change and the criteria modification shall be held concurrently. In such case, the Department shall provide separate public notices for the discharge limitation change and the criteria modification. Criteria modification completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards.

### 5.3 Reserved

5.4 ~~Variance for Pollutants Corroded and Eroded from Water Distribution Piping and Appurtenances:~~ For the purpose of establishing discharge limitations, a facility may be granted a variance from water quality criteria for pollutants contributed by normal corrosion and erosion associated with the facility's piping and appurtenances in situations where this corrosion and erosion causes or would be expected to cause exceedances in the receiving water, provided that the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:

(a) In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and

(b) The normal corrosion and erosion associated with the intake water used by the facility is sufficient to be the sole cause of the violation. For purposes of this determination, intake water characteristics shall be used in assessing normal corrosion and erosion; and—

(c) No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition to erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the

violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of pollutants previously discharged or disposed by the facility; and

(d) No practicable alternative water supply or treatment methodology or system which would yield statistically significant lower corrosivity or erosiveness is available to the facility; and

(e) The discharger demonstrates that controls more stringent than technology-based limits and Section 306 of the Clean Water Act that would result in substantial and widespread economic and social impact. The analysis of economic impacts must demonstrate that:

(1) The discharger would face substantial financial impacts due to the costs of the necessary pollution controls or water treatment (substantial impacts of which would interfere with development), and

(2) The affected community will bear significant adverse impacts if the entity is required to meet existing or proposed water quality standards (widespread impacts of important development).

The discharger will be required to meet applicable criteria for all other constituents. An alternative criteria will be derived for the erosion/corrosion-based pollutants based on intake water characteristics and properties of the facility's piping and appurtenances. A variance granted under this Section shall be effective for three years, or the life of the NPDES permit, and at the expiration of either time period, the discharger must either meet the criteria or make a new demonstration of unattainability and financial impact. Variances considered under this Section shall be subject to all applicable public participation requirements and shall be subject to review and approval by the U.S. Environmental Protection Agency.

#### 5.5 Reserved

### B. Conditions

#### 5.6 Reserved

5.7 Any person who shall apply for a permit to discharge to the waters of the State shall have the opportunity to submit an analysis to the Department at the time of application to demonstrate that said discharge will not cause, have the reasonable potential to cause, or contribute to an excursion of the receiving stream's water quality standards. The Department shall consider any analysis submitted by the applicant and also conduct its own analysis in making a determination whether the discharge causes, has the reasonable potential to cause, or contributes to an excursion of standards. The Department's review of analyses submitted by applicants as well as analyses the Department conducts on its own shall consider the information and factors listed in Section 5.6 of these Standards. Analyses performed under Section 5.7 shall be

conducted in concert with the requirements of Section 3, as applicable. A public hearing, pursuant to 7 Del. Code, Sections 6004 and 6006, may be held to gather public comment on any analysis submitted by an applicant in conjunction with Section 5.7.

5.8 Consistency with Other State and Federal Requirements: Nothing in Section 5 relieves or reduces the obligation of any person to comply with other applicable provisions of these Standards, federal or state laws and regulations.

### Section 6: Regulatory Mixing Zones

The following requirements shall apply to regulatory mixing zones:

6.1 Applicability: In instances where the Department determines, based upon engineering calculations or field studies, that complete mix (as defined herein) of effluent with its receiving water is not expected to occur, the Department may allocate a designated portion of the receiving water to provide for mixing of the effluent and the receiving water. This area shall be defined as a regulatory mixing zone and shall be determined on a case-by-case basis taking into account critical flows, outfall configuration and receiving stream characteristics. A mixing zone will not be allocated in instances where the Department determines that complete mix of effluent and receiving water occurs at the point of discharge, in which case, the critical flows as provided in Section 8 shall be applied in determining if the applicable criteria are met.

6.2 Location: Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas, or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

6.3 Outfall Design: Outfalls shall be designed to provide maximum protection for humans, aquatic life, and wildlife. Surface discharges to shallow near-shore areas shall be discouraged in preference to submerged outfalls located in deep offshore areas or other alternative discharge configurations which achieve Water Quality Standards.

6.4 Size: Size of the zone shall be no larger than is necessary to provide for mixing of effluent and receiving water. The following are the maximum size limitations that shall apply:

(a) Mixing zones for non-thermal pollutants shall be designed as follows:

(i) Rivers: During critical stream flow, as detailed in Section 8 of these standards, the maximum distance to the edge of the mixing zone shall be described by:

$$x_m \leq (uW^2) / (6H\sqrt{gHS})$$

- where  $x_m$  = maximum mixing zone length;
- $u$  = flow velocity for critical flow as detailed in Section 8.2© or Section 8.3;
- $W$  = width of river;
- $H$  = depth of river;
- $g$  = acceleration due to gravity, and
- $S$  = slope of river surface.

(ii) Lakes: Because of the shallow depth and small size of Delaware lakes, regulatory mixing zones shall be prohibited in these waters.

(iii) Tidal waters: For mean low water slack tide conditions, the maximum horizontal distance from the edge of the outfall structure to the edge of the mixing zone shall be no greater than twenty five percent (25%) of the width of the tidal water at the point of discharge.

(b) Mixing zones for thermal (temperature) pollutants shall be defined as those waters between the point of discharge and the point at which the receiving water temperature criteria are met as defined in Section 11, subject to criteria (I) through (v) below. For non-tidal freshwater, mixing zones shall be designed using the critical stream flow specified in Section 8.1 or 8.3.

(i) The greatest offshore extension of the mixing zone shall not exceed 50 percent of the width of the waterbody at the point of discharge.

(ii) Thermal mixing zone cross-sectional area as measured in a vertical plane perpendicular to the receiving water flow shall not occupy more than 25 percent (25%) of the cross-sectional area of the receiving water as measured from the point of discharge to the opposite shore.

(iii) In areas where multiple discharges are located in proximity, overlapping discharges may occur. In such instances, the above size limitations shall apply to the cumulative influence of the multiple discharges.

(iv) Because of the shallow depth and small size of Delaware lakes, thermal mixing zones shall be prohibited in those waters.

(v) As an alternative to (b)(i) through (b)(iv) above, the size of the thermal mixing zone may be determined on a site-specific basis. This determination must be based upon a sound rationale and be supported by substantial biological, chemical, physical, and engineering evidence and analysis. Any such determination must show to the Department's satisfaction that no adverse changes in the protection and propagation of balanced indigenous

populations of fish, aquatic life, and wildlife, may reasonably be expected to occur. A satisfactory showing made in conformance with Section 316(a) of the Water Quality Act of 1987 shall be deemed as compliance with the requirements of this paragraph.

6.5 In-Zone and Boundary of Zone Water Quality Requirements:

(a) Regulatory mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by the Clean Water Act or other applicable State and Federal laws or regulations.

(b) Regulatory mixing zones shall be free of the following:

(i) Materials which result in the accumulation of toxic substances in sediment, aquatic life, or food chains at levels that may be harmful to the health of humans or aquatic life;

(ii) Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

(iii) Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

(iv) Substances in concentrations that produce color, odor, taste, or turbidity that may lead to significant disruption of public water supply treatment systems, or may cause a nuisance condition; or

(v) Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

(c) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than one-tenth of the distance from the edge of the outfall structure to the boundary of the regulatory mixing zone as defined above.

(d) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than fifty (50) times the discharge length scale in any horizontal direction from the edge of the outfall structure.

(e) No acute aquatic life criterion, as detailed in Section 9 of this document, may be exceeded at any point greater than five (5) times the average water depth in the regulatory mixing zone in any horizontal direction from the edge of the outfall structure.

(f) No chronic aquatic life criterion, as detailed in Section 9 of this document, may be exceeded beyond the boundary of the regulatory mixing zone as defined above.

Section 7: Nutrients

Nutrient overenrichment is recognized as a significant problem in some surface waters of the State. It shall be the policy of this Department to minimize nutrient input to surface waters from point and human induced non-point sources. The types of, and need for, nutrient controls shall be

established on a site-specific basis. For lakes and ponds, controls shall be designed to eliminate overenrichment. For tidal portions of the stream basins of Indian River, Rehoboth Bay, and Little Assawoman Bay, controls needed to attain submerged aquatic vegetation growth season (approximately March 1 to October 31) average levels for dissolved inorganic nitrogen of 0.14 mg/L as N, for dissolved inorganic phosphorus of 0.01 mg/L as P, and for total suspended solids of 20 mg/L shall be instituted. The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 11.5 (d) of these standards. Nutrient controls may include, but shall not be limited to, discharge limitations or institution of best management practices.

#### Section 8: Critical Flows

8.1 For all waters of the State, all water quality standards and criteria, except those for toxic substances, shall not apply at those times when the freshwater flow or net advective flow falls below that value that is equal to the flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10). However, at all times all waters shall be free of materials and substances as listed in Section 6.5(b).

8.2. For all waters of the state, water quality criteria for toxic substances as specified in Section 9 shall not apply at those times when the freshwater or net advective flow falls below the following values:

(a) The harmonic mean flow for compounds which bear the abbreviation "CA" for human carcinogen;

(b) The flow of 30-day duration with recurrence interval of 5 years (generally known as the 30Q5 or Q30-5), for compounds which bear the abbreviation "ST" for human systemic toxicant;

(c) The flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10), for compounds having a chronic toxicity criterion; and

(d) The flow of 1-day duration with recurrence interval of 10 years (generally known as the 1Q10 or the Q1-10), for compounds having an acute toxicity criterion.

8.3. These critical flows shall also be used as design flows for developing water quality-based discharge limitations for the referenced groups of parameters. The Department shall consider scientifically reasonable requests for seasonally adjusted flows or the use of dynamic modeling techniques for this purpose on a case-by-case basis.

8.4. Nothing in Section 8 shall be construed as allowing any reduction in efficiency of, or suspension of, required pollution control practices, whether applied to point or nonpoint sources, during periods when flows are less than those specified for suspension of standards applicability in Sections 8.1-8.3.

#### Section 9: Toxic Substances

9.1 Applicability: Criteria set forth in this section apply to all surface waters of the State, except as provided in Section 6, Regulatory Mixing Zones, Section 8, Critical Flows, and Section 12, Criteria for Low Flow Waters.

##### 9.2 General Provisions:

(a) Waters of the State shall not exhibit acute toxicity to fish, aquatic life, and wildlife, except in special cases applying to regulatory mixing zones as provided in Section 6.

(b) Waters of the State shall not exhibit chronic toxicity to fish, aquatic life, and wildlife, except in regulatory mixing zones as provided in Section 6, at flows less than critical flows as provided in Section 8, or in low flow waters as provided in Section 12.

(c) Waters of the State shall be maintained to prevent adverse toxic effects on human health resulting from ingestion of chemically contaminated aquatic organisms and drinking water.

(d) The Department may consider synergistic, antagonistic, and additive impacts of combinations of toxicants to fish, aquatic life, and wildlife, and human health in assessing aggregate environmental impacts and mandating point and nonpoint source controls.

##### 9.3 Specific Numerical Criteria:

###### (a) Aquatic Life Criteria:

(i) Numerical criteria for the protection of aquatic life are established in Table 1 for all toxic substances for which adequate aquatic life toxicity information is available. All criteria for metals in Table 1 are in the total recoverable form, except as specifically footnoted for cyanide. For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Appropriate pH or hardness values for such criteria shall be determined on a case-by-case basis by the Department.

(ii) For toxic substances for which specific numerical criteria are not listed in Table 1, concentrations shall not exceed those which are chronically toxic (as determined from appropriate chronic toxicity data or calculated as 0.1 of LC<sub>50</sub> values) to representative, sensitive aquatic organisms, except as provided in Section 6, Regulatory Mixing Zones, Section 8, Critical Flows, or Section 12, Criteria for Low Flow Waters. Concentrations so determined shall be applied as four-day average concentrations not to be exceeded more than once in any three-year period.

###### (b) Human Health Criteria

(i) Numerical criteria for the protection of human health are established in Table 2 for all toxic substances for which adequate toxicity information is available. Water quality criteria appearing in Table 2 for pollutants identified as carcinogens have been established at

an upper bound worst case risk management level of one excess cancer in a population of one million ( $1 \times 10^{-6}$ ) over a 70-year lifetime. Criteria listed under the column header "Fish and Water Ingestion" apply only to surface waters of the State designated as Public Water Supply Sources in Section 10 of these Standards. Criteria listed under the column header "Fish/Shellfish Ingestion" apply only to marine surface waters of the State. Criteria listed under the column header "Fish Ingestion Only" apply to all fresh surface waters of the State not designated as Public Water Supply sources in Section 10 of these Standards.

(ii) For compounds in Table 2 which are considered as both systemic toxicants and human carcinogens, criteria based on both human health concerns are presented. In determining pollution control requirements, the more stringent criterion, after consideration of critical (design) flows in Section 8, shall be utilized.

~~\* TABLES 1 & 2 ARE AT THE END OF THE PROPOSED REGULATION.~~

**Section 10: Stream Basins & Designated Uses**

The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.

~~\* THE CHART DESIGNATING STREAM BASINS & DESIGNATED USES AND FIGURE 1 ARE AT THE END OF THE PROPOSED REGULATION.~~

**Section 11: Surface Water Quality Criteria**

**11.1 General Criteria for Fresh Waters**

The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 5°F.
		(b) No human-induced increase of the true daily mean temperature above 82°F shall be allowed.
		(c) No human-induced increase of the daily maximum temperature above 86°F shall be allowed.

Dissolved Oxygen mg/L

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish

(a) Average for the June-September period shall not be less than 5.5 mg/L

(b) Minimum shall not be less than 4.0 mg/L

(c) In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3 and 5 of these Standards.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

pH Standard Units

(a) Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.

(b) Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.

Alkalinity mg/L as CaCO<sub>3</sub>

Shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.

Phenol	mg/L	Shall not exceed 0.3 mg/L.			75°F, shall be allowed.
4-chloro-3-methylpheno-2-chlorophenol	mg/L	Shall not exceed 3.0 mg/L	Dissolved Oxygen	mg/L	(a) Average shall not be less than 6.5 mg/L unless below this value due solely to natural conditions. When the average is below 6.5 mg/L due to natural conditions, no reduction due to human-induced change is allowed.
2,4-dichlorophenol	ug/L	Shall not exceed 0.1 ug/L			
2,4-dimethylphenol	ug/L	Shall not exceed 0.3 ug/L			(b) Minimum shall not be less than 5.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 5.0 mg/L due to natural conditions, no reduction due to human-induced change is allowed.
Pentachlorophenol	mg/L	Shall not exceed 0.03 mg/L			
Turbidity	Nephelometric or Formazin Turbidity Units	Shall not exceed natural levels by more than 10 units.			

~~11.2 Additional Criteria for Other Fresh Water Designated Uses~~

~~(a) Public Water Supply~~

~~Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:~~

~~(i) Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:~~

~~(A) Unacceptable levels of taste or odor in the treated water;~~

~~(B) Significant disruption of the treatment processes at the treatment facility; or~~

~~(C) Concentrations of toxic substances in the treated water that may be harmful to human health. The requirements of Section 9 shall apply.~~

~~(b) Cold Water Fisheries (put and take)~~

~~The criteria given in this section shall apply only during that period of the year designated for put and take trout fishing for each stream (see Section 10). The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified.~~

~~11.3 General Criteria for Marine Waters~~

~~The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:~~

Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions:
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~~(i) No human induced increase of the true daily mean temperature above 84°F shall be allowed; and~~

~~(ii) No human induced increase of the daily maximum temperature above 87°F shall be allowed.~~

~~(b) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.~~

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>	Dissolved Oxygen	mg/L	(a) Average for the June-September period shall not be less than 5.0 mg/L unless below this value due solely to natural conditions. When the average is below 5.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human induced
Temperature	Fahrenheit Degrees	(a) Maximum increase above natural conditions shall be 5°F.  (b) No human induced increase of the true daily mean temperature above			

changes.

(b) Minimum shall not be less than 4.0 mg/L unless below this value due solely to natural conditions. When the minimum is below 4.0 mg/L due to natural conditions, the average shall not be lowered more than 0.5 mg/L due to human-induced changes.

(c) In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 3 and 5 of these Standards.

(d) The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

pH                      Standard Units

(a) Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.

(b) Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.

Alkalinity            mg/L as CaCO<sub>3</sub>

Shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced

changes is allowed.

Phenol	mg/L	Shall not exceed 0.3 mg/L.
4-chloro-3-methylphenol	mg/L	Shall not exceed 3.0 mg/L <sup>2</sup>
2-chlorophenol	ug/L	Shall not exceed 0.1 ug/L
2,4-dichlorophenol	ug/L	Shall not exceed 0.3 ug/L
2,4-dimethylphenol	mg/L	Shall not exceed 0.4 mg/L
Pentachlorophenol	mg/L	Shall not exceed 0.03 mg/L
Turbidity	Nephelometric or Formazin Units	Shall not exceed natural levels by more than 10 units.

11.4 Additional Criteria for Other Marine Water Designated Uses

(a) Harvestable shellfish waters (refer to Section 10)

Harvestable shellfish waters are waters from which shellfish may be taken and consumed; such waters are approved for shellfish harvesting by the State Board of Health. The following criteria shall apply:

<u>INDICATOR</u>	<u>UNITS OF MEASURE</u>	<u>CRITERIA</u>
Total coliform	MPN/100 mL	The coliform median MPN of the water shall not exceed 70/100 mL, nor shall more than 10% of the samples have an MPN in excess of 330/100 mL for a 3 decimal dilution test (or 230/100 mL where the 5 tube decimal test is used). These criteria shall be verified through sampling of those portions of the shellfish area most probably exposed to fecal contamination for those tidal and climatic conditions most likely to result in contamination of the shellfish area.

(b) Delaware River/Bay (PA DE line, RM 78.8 to Cape Henlopen, RM 0.0)  
The following criteria shall apply outside approved

regulatory mixing zones unless otherwise specified.

86°F shall be allowed.

Enterococcus Colonies/The geometric average of a  
Bacteria 100mL representative group of  
-samples shall not  
-exceed 10/100mL.

(b) The Department may  
mandate additional  
limitations on a site-specific  
or seasonal basis in order to  
provide incremental  
protection for early life  
stages of fish.

Dissolved Oxygen mg/L (a) Minimum true daily  
mean shall not be less than  
6.0 mg/L. This criterion  
shall apply from RM 59.5  
to RM 0.0 only.

(e) Lewes-Rehoboth Canal

(b) Minimum shall not be  
less than 5.0 mg/L

Dissolved  
Oxygen

mg/L

(a) Average for the June-  
September period shall not  
be less than 3.0 mg/L

(c) In cases where natural  
conditions prevent  
attainment of these  
criteria, allowable  
reduction in dissolved-  
oxygen levels as a result of  
human activities shall be  
determined through  
application of the  
requirements of Sections 3  
and 5 of these Standards.

(b) Minimum shall not be  
less than 2.0 mg/L

11.5 Criteria for Waters of Exceptional Recreational  
or Ecological Significance (ERES Waters)

(a) General Policy

(i) Designated ERES waters shall be  
accorded a level of protection and monitoring in excess of  
that provided most other waters of the State. These waters  
are recognized as special natural assets of the State, and must  
be protected and enhanced for the benefit of present and  
future generations of Delawareans.

(d) The Department may  
mandate additional  
limitations on a site-specific  
or seasonal basis in order to  
provide incremental  
protection for early life  
stages of fish.

(ii) ERES waters shall be restored, to the  
maximum extent practicable, to their natural condition. To  
this end, the Department shall, through adoption of a  
pollution control strategy for each ERES stream basin, take  
appropriate action to cause the systematic control, reduction,  
or removal of existing pollution sources, and the diversion of  
new pollution sources, away from ERES waters.

(iii) Discharges to ERES waters shall be  
avoided to the maximum extent practicable. In order to be  
permitted, a discharge must be the least environmentally  
damaging practicable alternative.

Temperature Fahrenheit (a) Maximum increase  
Degrees above natural conditions  
shall be 4°F from October  
through May. Temperature  
rise during June through  
September shall be limited  
by the following  
conditions:

(iv) Prior to any public notice for a discharge  
permit required pursuant to 7 Del. Code Chapter 60, the  
Department shall make a determination that potential  
impacts have been avoided to the maximum extent  
practicable, and that remaining unavoidable impacts will be  
minimized to the extent appropriate and practicable.  
Findings shall be based upon appropriate factual  
determinations, evaluations, and tests with special emphasis  
on the persistence and permanence of the impacts. Under  
this provision impacts considered individually or  
collectively include:

(i) No human induced  
increase of the true daily  
mean temperature above  
84°F shall be allowed; and

(ii) No human induced  
increase of the daily  
maximum temperature above

(A) Impacts of pollutants on human health  
and welfare;

(B) Impacts of pollutants on life stages of  
aquatic life and other wildlife dependent on aquatic

ecosystems including, but not limited to, the transfer, concentration, and spread of pollutants or their by products through biological, physical, and chemical processes;

(C) Impacts of pollutants on aquatic ecosystem diversity, productivity, and stability. Such impacts may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

(D) Impacts on recreational, aesthetic, and economic values.

(v) Any applicant for a discharge permit required pursuant to 7 Del. Code Chapter 60 shall provide to the Department, as part of a complete application, a resource assessment tailored to the site performed by qualified professionals. Such assessments shall fully consider ecological functions and values in light of the policies set forth in these standards. Consideration shall be given to:

(A) Potential impacts on physical and chemical characteristics of the aquatic ecosystems which shall include, but not be limited to, substrates, substrate particulates/turbidity, water, current patterns, water circulation, normal water fluctuations, and salinity gradients;

(B) Potential impacts on biological characteristics of the aquatic ecosystem which shall include, but not be limited to, fish, crustaceans, mollusks and other organisms in the food web, other wildlife, and threatened or endangered species; and

(C) Potential effects on human use characteristics which shall include, but not be limited to, water supplies, recreational and commercial fisheries, water related recreation, aesthetics, parks, research sites, wildlife areas or public access areas.

(b) General Provisions

(i) In cases where natural conditions prevent attainment of applicable fresh or marine dissolved oxygen criteria, reduction in dissolved oxygen levels as a result of human activities shall be prohibited.

(ii) All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove nutrients to the extent necessary to prevent excessive growth of photosynthetic organisms.

(iii) All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove particulate matter to the extent necessary to minimize turbidity.

(iv) ERES waters shall not exhibit toxicity within aquatic habitats commonly used by native or migratory aquatic, terrestrial, and avian species. Such habitats include, but may not be limited to, spawning sites, nursery areas, forage areas, and migratory pathways.

(v) ERES standards shall not apply in excavated waters. All other appropriate criteria shall remain

in force for these waters.

(vi) The ERES criteria set forth in Section 11.5 supplement all other applicable requirements of these standards for ERES waters. Nothing in Section 11.5 relieves or reduces the obligation of any person to comply with other requirements of these Standards, federal or state laws and regulations.

(e) Pollution Prevention

(i) Existing Sources: For the purposes of this Section 11.5, an existing source shall be defined as a discharge for which a permit has been issued by the Department pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991. In the case of a water body designated as ERES waters pursuant to Section 10 of the Standards, the Department shall not issue or reissue a permit for an existing source unless the applicant demonstrates a utilization of all economically feasible and reasonably available waste minimization practices and technologies, and the lack of feasible alternative production processes and disposal options.

The provisions of Subsections 11.5 (a)(iv), 11.5(a)(v), and 11.5 (c)(i) shall apply to existing sources on January 1, 1996, or upon adoption of a Pollution Control Strategy as provided in Section 11.5(d), whichever occurs first. In either event, the provisions of Section 11.5, including all requirements of the Pollution Control Strategy shall apply to existing sources.

(ii) Increased or New Sources: For the purposes of Section 11.5, new sources are those discharges for which a permit has not been issued pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991, and increased sources are those discharges for which there is an increase in the pollutant of concern from any existing source. For the purposes of Section 11.5, pollutants of concern are the following: oxygen-demanding substances (as may be measured by BOD and COD), nitrogen, phosphorous, bacteria, heat, and total suspended solids. In the case of any waterbody designated as ERES waters pursuant to Section 10 of the Standards, the Department shall not issue or reissue a permit pursuant to 7 Del. Code Chapter 60 that allows an increase in or new source of pollutant loadings of pollutants of concern unless the applicant demonstrates:

(A) A need to discharge based upon a showing of the full utilization of measures, processes, methods, systems or techniques to eliminate the discharge altogether or minimize waste loadings through process changes, substitution of materials, enclosure of systems or other modifications. This can be demonstrated through the full utilization of available waste minimization practices and technologies and the lack of feasible alternative production processes and disposal options; and

(B) That a proposed new discharge or any increase in loading of pollutants of concern of an existing discharge is consistent with the Pollution Control Strategy

for the basin. Prior to adoption of a Pollution Control Strategy for a stream basin no increase in loadings of pollutants of concern shall be allowed to the stream basin from a surface water discharger unless the Secretary determines that:

(1) Such discharger offsets the increased surface water discharge of pollutants of concern within the stream basin to the maximum extent practicable in an acceptable manner;

(2) The increased loadings of pollutants of concern are necessary to prevent a substantial adverse economic or social impact at the community or regional level, and

(3) Water quality will be maintained to fully protect existing uses.

(d) Pollution Control Strategy

(i) For each stream basin designated as ERES waters pursuant to Section 10 of these standards, the Department shall develop a pollution control strategy. The strategy shall provide for the implementation of best management practices established pursuant to Subsection 11.5(e) of this section and shall include such additional requirements, measures, and practices as are necessary to:

(A) Prevent the violation of water quality standards;

(B) Protect all resources in the stream basin in a manner that allows for natural conditions to be maintained or restored; and

(C) Assure the protection and propagation of a balanced, indigenous population of fish, shellfish, aquatic vegetation, and wildlife, and provide for recreational activities in and on the water.

(ii) The strategy pursuant to this subsection shall, at a minimum:

(A) Provide an assessment of the nature, degree, and extent of pollution to waters within such stream basin, in terms of point source and non-point source contribution;

(B) Identify the aspects of the stream basin which are important, unique, or sensitive from a recreational or ecological perspective;

(C) Establish such additional indicators and criteria that satisfy the general policy and provisions established for such stream basins;

(D) Identify the means by which ERES standards will be achieved;

(E) Delineate, where appropriate, the specific point source effluent limits, best management practices, and other controls that will be used to achieve water quality standards; and

(F) Indicate changes to be made to state plans for control of water pollution or resource management to assure implementation of the strategy.

(iii) The Department shall assure the

opportunity for public participation in the development of the strategy required pursuant to this subsection and shall provide for public review and comment on the strategy in accordance with 7 Del. Code 6010.

(iv) The Department may, to the extent it deems appropriate, provide technical assistance to local governments in developing and implementing the strategy required pursuant to this subsection.

(v) The Department shall, to the extent it deems appropriate, pursue and coordinate implementation of any strategy developed pursuant to this subsection through priority application of its resources to ERES waters through its regulatory and non-regulatory programs.

(vi) The Department may, in accordance with 7 Del. Code 6010, adopt and require the use of specific combinations of methods, practices, and technologies which it deems to be most effective for controlling, reducing, or removing waste loadings to ERES waters. Such requirements shall be based upon the application of good engineering and environmental science practices and principles, achieve a high degree of reliability, and be appropriate for the categories of activity.

(e) Best Management Practices

The Department may adopt, pursuant to 7 Del. Code 6010, best management practices for selected sources of pollution to ERES waters. Best management practices identified by the Department pursuant to this subsection shall provide a standard for the control of the addition of pollutants which reflects the greatest degree of pollutant reduction achievable including, where practicable, a standard requiring no discharge of pollutants.

11.6 Criteria Governing Primary Contact Recreation

The criteria specified below are calculated using EPA's "Ambient Water Quality Criteria for Bacteria, 1986" (EPA 440/5-84-002, January, 1986). A statistically derived risk of highly credible swimming-associated gastroenteritis illness of 12.5 per 1000 swimmers (1.25%) has been utilized to calculate these criteria. The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary contact recreation in waters of the state. The criteria apply to enterococcus bacteria determined by the Department to be of human origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present a risk of highly credible gastroenteritis illness in excess of 12.5 per 1000 swimmers, and is not recommended. The following criteria shall apply:

Enterococcus Bacteria Colonies/100mL

For all fresh waters of the state, the geometric average of a representative group of samples shall not exceed 100/100 mL.

**Enterococcus Bacteria Colonies/100mL**

For all marine waters of the state, the geometric average of a representative group of samples shall not exceed 10/100 mL.

**Section 12: Criteria for Low Flow Waters**

12.1 A low flow water is one in which the 7Q10 freshwater inflow is less than 0.1 cfs. The following criteria shall apply to discharges into low flow waters:

(a) Where information is available for the receiving water which indicates that, because of low flow, it would not support designated uses, then numeric criteria shall not apply. The numeric criteria shall then apply at the closest downstream point where uses could reasonably be expected to occur.

(b) The discharge shall not add:

(i) Materials which result in the accumulation of toxic substances in sediment, aquatic life or food chains at levels that may be harmful to the health of humans or aquatic life;

(ii) Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

(iii) Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

(iv) Substances in concentrations that produce color, odor, taste or turbidity that may lead to significant disruption of a public water supply treatment systems, or may cause a nuisance condition; or

(v) Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

12.2 The applicant for discharge shall bear the burden of showing, to the satisfaction of the Department, that the provisions of 12.1 (a) and 12.1 (b) above are met.

12.3 Any application for new or increased discharge to a low flow water must include a thorough evaluation of alternate discharge configurations, including but not limited to water conservation, relocating the outfall to a more suitable location, conveying the wastewater to other available treatment facilities, or utilizing land treatment. Alternatives which do not include discharge must be used wherever technologically feasible and cost-effective (notwithstanding other requirements of these or other applicable regulations).

**Section 13: Separability**

Should any section, paragraph, or other part of this document be declared invalid for any reason, the remainder shall not be affected.

TABLE 1

**WATER QUALITY CRITERIA FOR PROTECTION OF AQUATIC LIFE**

(All Values Are Listed or Calculated in Micrograms Per Liter)

Parameter	Fresh Acute Criterion	Fresh Chronic Criterion	Marine Acute Criterion	Marine Chronic Criterion
Aldrin	3.0	—	1.3	—
Aluminum	750.	87.	—	—
Arsenic (III)	360.	190.	69.	36.
Cadmium	$e^{(1.128[\ln(Hd)]-3.828)}$	$e^{(0.7852[\ln(Hd)]-3.490)}$	43.	9.3
Chlordane	2.4	0.0043	0.09	0.004
Chlorine	19	11.	13	7.5
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
Chromium (III)	$e^{(0.8190[\ln(Hd)]+3.688)}$	$e^{(0.8190[\ln(Hd)]+1.561)}$	—	—
Chromium (VI)	16.	11.	1,100.	50.
Copper	$e^{(0.9422[\ln(Hd)]-1.464)}$	$e^{(0.8545[\ln(Hd)]-1.465)}$	2.9	—
Cyanide <sup>1</sup>	22.	5.2	1.0	—
DDT and Metabolites	1.1	0.0010	0.13	0.0010
Demeton	—	0.10	—	0.10
Dieldrin	2.5	0.0019	0.71	0.0019
Endosulfan	0.22	0.056	0.034	0.0087

# FINAL REGULATIONS

Endrin	0.18	0.0023	0.037	0.0023
Guthion	--	0.01	--	0.01
Heptachlor	0.52	0.0038	0.053	0.0036
Hexachlorocyclohexane-	2.0	0.08	0.16	--
Iron	--	1000.	--	--
Lead	$e^{(-1.273[\ln(Hd)]-1.460)}$	$e^{(-1.273[\ln(Hd)]-4.705)}$	140.	5.6
Malathion	--	0.1	--	0.1
Mercury (II)	2.4	0.012	2.1	0.025
Methoxychlor	--	0.03	--	0.03
Mirex	--	0.001	--	0.001
Nickel	$e^{(0.8460[\ln(Hd)]+3.3612)}$	$e^{(0.8460[\ln(Hd)]+1.1645)}$	75.	8.3
Total PCBs	2.0	0.014	10	0.03
Parathion	0.065	0.013	--	--
Pentachlorophenol	$e^{[1.005(pH)-4.830]}$	$e^{[1.005(pH)-5.290]}$	13.	7.9
Selenium	20	5.0	300.	71.
Silver	$e^{(1.72[\ln(Hd)]-6.52)}$	0.12	2.3	--
Toxaphene	0.78	0.0002	0.21	0.0002
Zinc	$e^{(0.8473[\ln(Hd)]+0.8604)}$	$e^{(0.8473[\ln(Hd)]+0.7614)}$	95.	86.

Notes:

<sup>†</sup> Cyanide measured as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination.

Specific numerical acute criteria as presented in this table are applied as one-hour average concentrations not to be exceeded more than once in any three-year period. Specific numerical chronic criteria as presented in this table are applied as four-day average concentrations not to be exceeded more than once in any three-year period.

ln = natural log base e

e = 2.71828

Hd = hardness is expressed as mg/L as CaCO<sub>3</sub>

pH is expressed as Standard Units

Example calculation: Fresh acute criterion for silver at hardness of 50 mg/L. Criterion in ug/L = e raised to the [1.72 ln(50) - 6.52] power. This is equal to e to the 0.21 power, or 1.23 ug/L.

**TABLE 2**  
**WATER QUALITY CRITERIA FOR PROTECTION OF HUMAN HEALTH**  
(All Values Are Listed in Micrograms Per Liter Unless Noted Otherwise)

	Freshwater		Marine/Estuarine	Human Health
	Fish Ingestion Only	Fish and Water Ingestion	Fish/Shellfish Ingestion	
Arolei	1.0 mg/L	360.	140.	SF
Acrylonitrile	0.83	0.06	0.12	CA
Aldrin	0.17 ng/L	0.16 ng/L	0.02 ng/L	CA
Aldrin	0.086	0.080	0.012	SF
Antimony	5.4 mg/L	14.	760.	SF
Arsenic**		50. (MCL)		CA
Barium**		1.0 mg/L (MCL)		SF
Benzene	89.	1.2	12.5	CA
Benzidine	0.67 ng/L	0.12 ng/L	0.09 ng/L	CA
Benzidine	460.	85.	64.	SF

# FINAL REGULATIONS

171

Benzo (A) Pyrene (3,4 Benzopyrene)	0.037	0.0027	0.0053	CA
Beryllium	0.08	0.0038	0.011	CA
Beryllium	3.5 mg/L	170.	500.	ST
Bromoform (Tribromomethane)	266	5.6	37.4	CA
Bromoform (Tribromomethane)	34. mg/L	690.	4.7 mg/L	ST
Cadmium**		10.(MCL)		ST
Carbon Tetrachloride (Tetrachloromethane)	5.5	0.26	— 0.78 —	CA
Carbon Tetrachloride (Tetrachloromethane)	500.	23.	70.	ST
Chlordane	0.73 ng/L	0.72 ng/L	0.13 ng/L	CA
Chlordane	0.057	0.056	0.008	ST
Chlorobenzene	— 26.1 mg/L	680.	3.7 mg/L	ST
Chloroethyl Ether (Bis-2-Chloroalkyl Ether)	1.77	0.031	0.25	CA
Chloroform (Trichloromethane)	368.	5.7	52.	CA
Chloroform (Trichloromethane)	22. mg/L	340.	3.2 mg/L	ST
Chromium**		50. (MCL)		ST
Chromium (Hexavalent)	4.2 mg/L	170.	590.	ST
Chromium (Trivalent)	840. mg/L	34. mg/L	120. mg/L	ST
Cyanide	270. mg/L	700.	38. mg/L	ST
DDT and Metabolites	0.74 ng/L	0.73 ng/L	0.10 ng/L	CA
DDT and Metabolites	0.13	0.12	0.018	ST
Dibenzo (A,H) Anthracene Anthracene—	0.037	0.0027	0.0053	CA
1,2-Dichlorobenzene	21.8 mg/L	2.8 mg/L	3.1 mg/L	ST
1,3-Dichlorobenzene	4.3 mg/L	410.	600.	ST
1,4-Dichlorobenzene**	24. mg/L	75. (MCL)	3.4 mg/L	ST
3,3-Dichlorobenzidine	0.025	0.011	0.0036	CA
1,2-Dichloroethane	123.	0.38	17.	CA
1,1-Dichloroethylene	4.	0.058	0.56	CA
1,1-Dichloroethylene	20. mg/L	310.	2.8 mg/L	ST
1,2-Trans-dichloroethylene	130. mg/L	700.	19. mg/L	ST
Dichloromethane	2.0	4.7	277.	CA
Dichloromethane	810. mg/L	2.1 mg/L	110 mg/L	ST
2,4-Dichlorophenoxyacetic acid (2,4-D)**		100. (MCL)		ST
1,3-Dichloropropene	392.	0.19	5.5	CA
1,3-Dichloropropene	2.0 mg/L	10.0	280.	ST
Dieldrin	0.18 ng/L	0.17 ng/L	0.025 ng/L	CA
Dieldrin	0.14	0.13	0.02	ST
Diethylphthalate	148. mg/L* mg/L*	24.0 mg/L	21.0 mg/L	ST
Dimethylphthalate	3,700. mg/L	320. mg/L	530. mg/L	ST
2, 4-Dinitrotoluene	96.	0.94	13.	CA
2, 4-Dinitrophenol	13.0 mg/L	70.	1.9 mg/L	ST
Dioxin (2,3,7,8-TCDD)	0.000017 ng/L	0.000016 ng/L	0.0000024 ng/L	CA

## FINAL REGULATIONS

1, 2 Diphenylhydrazine	0.68	0.041	0.095	CA
Endosulfan	2.5	1.0	0.35	ST
Endrin**	1.0	0.2 (MCL)	0.14	ST
Ethylbenzene	35. mg/L	3.2 mg/L	5.0 mg/L	ST
Fluoranthene	67.	50.	9.4	ST
Fluoride**		1.8 mg/L (MCL)		ST
Heptachlor	0.27 ng/L	0.26 ng/L	0.037 ng/L	CA
Heptachlor	0.60	0.58	0.084	ST
Hexachloroethane-	11.	2.	1.6	CA
Hexachloroethane	150.	29.	22.	ST
Hexachlorobenzene	0.88 ng/L	0.85 ng/L	0.12 ng/L	CA
Hexachlorobenzene	1.2	1.2	0.17	ST
Hexachlorobutadiene	62.1	0.44	8.7	CA
Hexachlorobutadiene	2.0 mg/L*	69.	1.3 mg/L	ST
Hexachlorocyclohexane (Gamma-Lindane)	0.08	0.02	0.011	CA
Hexachlorocyclohexane (Gamma-Lindane)**	31.	4.0 (MCL)	4.4	ST
Hexachlorocyclohexane (Alpha)	0.016	0.0041	0.0023	CA
Hexachlorocyclohexane (Beta)	0.058	0.014	0.0081	CA
Hexachlorocyclopentadiene	1.8 mg/L*	240.	1.8 mg/L*	ST
Isophorone	500. mg/L	5.2 mg/L	71. mg/L	ST
Lead**		50.(MCL)		CA
Mercury** (Inorganic)	7.1	2.0 (MCL)	1.5	ST
Methoxychlor**		100.(MCL)		CA
Nickel	5.7 mg/L	620.	810.	ST
Nitrate-Nitrogen**		10. mg/L (MCL)		ST
Nitrobenzene	2.2 mg/L	17.0	320.	ST
Nitrosodimethylamine-N	10.	0.68 ng/L	1.4	CA
Nitrosodiphenylamine-N	20.	5.3	2.8	CA
Nitrosodipropylamine-N	35.	0.005	4.9	CA
PCBs (1242, 1254, 1221, 1232, 1248, 1260, 1016)	0.056 ng/L	0.055 ng/L	0.0079 ng/L	CA
(Bis-2) Ethyl Hexyl Phthalate	7.4	1.9	1.	CA
(Bis-2) Ethyl Hexyl Phthalate	400.*	400.*	290.	ST
Di-N-Butyl Phthalate	13. mg/L*	2.8 mg/L	2.1 mg/L	ST
Selenium**	1.1 mg/L	10. (MCL)	160.	ST
Silver**	0. mg/L	50. (MCL)	5.7 mg/L	ST
1,1,2,2 Tetrachloroethane	13.5	0.17	1.9	CA
Tetrachloroethylene	4.3 mg/L	320.	610.	ST
Thallium	60.	14.	8.4	ST
Toluene	370. mg/L	10. mg/L	52. mg/L	ST
Total Trihalomethanes**		100.(MCL)		CA
Toxaphene	0.93 ng/L	0.91 ng/L	0.13 ng/L	CA
1,2,4 Trichlorobenzene	19. mg/L	680.	2.7 mg/L	ST
1,1,1 Trichloroethane**	200. mg/L	200. (MCL)	28. mg/L	ST
1,1,2 Trichloroethane	52.5	0.61	7.4	CA

1,1,2-Trichloroethane	11. mg/L	140.	1.5 mg/L	ST
Trichloroethylene	115.	3.1	16.	CA
2,4,6-Trichlorophenol	4.5	1.3	0.63	CA
2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP-Silvex)**		10. (MCL)		ST
Vinyl Chloride	677.	2.1	-95.	CA

NOTES: mg/L = milligrams per liter  
 ng/L = nanograms per liter  
 CA = carcinogen  
 ST = systemic toxicant

The columns labeled "Fish and Water Ingestion" shall apply only to waters of the State designated Public Water Supply sources in these standards.

The column labeled "Fish Ingestion Only" shall apply to all fresh waters of the State not designated Public Water Supply sources in this document.

The column labeled "Fish/Shellfish Ingestion" shall apply only to marine waters of the State.

\* Calculated solubility of compound in water is less than criterion; therefore, solubility limit calculated at 25<sup>o</sup> C and 1 atm is substituted.

\*\* Values shown under header "Fish and Water Ingestion" are Primary Maximum Contaminant Levels (MCLs) as given in the State of Delaware Regulations Governing Public Drinking Water Systems as amended May 19, 1989.

**Section 10. Stream Basins and Designated Areas**

The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.

- (a) Designated use for freshwater segments only (b) Designated use from March 15 to June 30 on:
  1. Beaver Run from PA/DE line to Brandywine.
  2. Wilson Run Route 92 through Brandywine Creek State Park.
- (c) Designated use from March 15 to June 30 on: Christina River from MD/DE line through Rittenhouse Park.
- (d) Designated use for marine water segments only.
- (e) Designated use year round on: Red Clay Creek from PA/DE line to the concrete bridge above Yorklyn
- (f) Designated use year round on:

- 1. White Clay Creek from the PA/DE line to the dam at Curtis Paper.  
 Designated use from March 15 to June 30 on:
  2. Mill Creek from Braekenville Road to Route 7.
  3. Pike Creek from Route 72 to Henderson Road.

- (g) Designated use from PA/DE line to the dam at Curtis Paper.
- (h) Designated use from PA/DE line to Wilmington city line.
- (i) Goal use not currently attained.
- (j) Parts of these waters are APPROVED shellfish harvesting areas. Information on areas where shellfish may be taken should be obtained from the Shellfish & Recreational Waters Branch, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control
- (k) Includes Primehook Creek watershed.
- (l) Includes assorted minor watersheds not explicitly associated with any other designated stream basin.
- (m) The specific portions of the Atlantic Ocean and the Delaware Bay for which the ERES designation shall apply shall be delineated in the Pollution Control Strategy developed for each of those waterbodies. The ERES designation for the Atlantic Ocean and the Delaware Bay does not include water explicitly associated with any other designated stream basis (e.g., Delaware Bay does not include St. Jones River).
- (n) The Delaware Bay extends from River Mile 0.0 to 48.2 as shown on Figure 1.
- (o) The Delaware River extends from River Mile 48.2 to 78.8 as shown in Figure 1.
- \* this designated water use to be protected throughout entire stream basin
- water uses not designated in the stream basin

\* ~~waters of exceptional recreational or ecological significance~~

\*\* ~~includes shellfish propagation~~

### **Section 1: Intent**

1.1 It is the policy of the Department to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water.

1.2 Where conflicts develop between stated surface water uses, stream criteria, or discharge criteria, designated uses for each segment shall be paramount in determining the required stream criteria, which, in turn, shall be the basis of specific discharge limits or other necessary controls.

1.3 Where existing facilities operating under a permit from this Department are required to reduce pollution concentrations or loadings due to the implementation of these surface water quality standards, a reasonable schedule for compliance may be granted in accordance with standards or requirements established in applicable statutes and regulations.

1.4 The Department intends to develop an agency-wide program to assess, manage, and communicate human health cancer risks from the major categories of environmental pollution under its jurisdiction. As a result of this activity, it may be necessary to adjust the upper bound worst case risk management level stated in Section 4.5.9.3.2.1.

### **Section 2: Definitions**

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

Acute: Involving a stimulus severe enough to rapidly induce an adverse response; in toxicity tests, an adverse response observed in 96 hours or less is typically considered acute. An acute effect is not always measured in terms of lethality; it can measure a variety of short term adverse effects.

Additive effect: The total effect of a mixture of pollutants which is equal to the arithmetic sum of the effects of the individual pollutants in the mixture.

Agriculture: The use of land and water in the production of food, fiber and timber products.

Antagonistic effect: The total effect of a mixture of pollutants which is less than the arithmetic sum of the effects of the individual pollutants in the mixture.

Average: Unless otherwise noted, the arithmetic mean of a representative group of samples for a specified parameter. Representativeness shall be determined through application of appropriate statistical techniques to data collected at times of critical ambient conditions, as

determined on a parameter-by-parameter basis.

Best Management Practice (BMP): BMPs are methods, measures or practices that are determined by the Department to be reasonable and cost-effective means for a person to meet certain, generally nonpoint source, pollution control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during or after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

Best scientific judgment: Findings, conclusions, or recommended actions which result from the application of logical reasoning and appropriate scientific principles and practices to available and relevant information on a particular situation.

Bioavailability: A measure of the physicochemical access of a pollutant to an organism.

Biodegradation: The biological decomposition of natural or synthetic organic materials by microorganisms.

Carcinogen: A substance that increases the risk of benign or malignant neoplasms (tumors) in humans or other animals. Carcinogens regulated through these Standards include but may not be limited to those toxic substances classified as Group A or Group B carcinogens as defined in 51 FR 185 (9/24/86).

Chronic: Involving a stimulus that produces an adverse response that lingers or continues for a relatively long period of time, often one-tenth of the life span or more. Chronic should be considered a relative term depending on the life span of the organism. A chronic effect can be lethality, growth or reproductive impairment, or other longer term adverse effect.

Clean Water Act: 33 U.S.C. 1251 et. seq., as amended.

Cold water fish use: Protection of fish species (such as from the family Salmonidae) and other flora and fauna indigenous to a cold water habitat.

Complete mix: The concentration of a discharged pollutant varies by no more than 5% over the cross-sectional area of the receiving water at the point of discharge.

Conservation plan: A conservation plan is a record of land user decisions affecting land use and conservation treatment of natural resources including soil, water, air, plant, and animal resources. It is comprised of resource management systems which are groups of interrelated conservation practices (BMPs) and management measures formulated to protect, restore, or improve the resource base. Conservation plans are usually developed with the assistance of conservation districts using district BMP standards (ref: Field Office Technical Guide, USDA Soil Conservation Service).

Control structure: A dam, weir or other structure placed by man to regulate stream flow and/or create an impoundment.

Critical flow: A statistically determined minimum flow.

which has a defined duration and recurrence interval.

Degradation: Any adverse change in water quality or existing uses.

Department: Delaware Department of Natural Resources and Environmental Control.

Designated uses: Those uses specified in water quality standards for each water body or segment whether or not they are being attained.

Diadromous: Describes fish which migrate to and from marine water and freshwater for the purpose of spawning.

Discharge length scale: The square root of the cross-sectional area of any discharge outlet.

Dispersion: A physical mixing process which results in the scattering of particles or dissolved materials in the water column.

Early life stages: Life stages for fish which include all embryonic and larval stages, and all juvenile forms to 30 days following hatching.

Ephemeral: Describes a stream which contains flowing water only for short periods following precipitation events.

Excavated waters: Waters of the State which are wholly human-created. Such waters shall include but not be limited to upland basins with surface outlets, drainage and tax ditches which are ephemeral, and dug ponds.

Existing use: Those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

Fish, aquatic life and wildlife: All animal and plant life found in Delaware, either indigenous or migratory, regardless of life stage or economic importance.

Foam: Frothy, generally stable, whitish mass of bubbles formed on or in the water upon agitation of the water.

Fresh water: Waters of the State which contain natural levels of salinity of 5 parts per thousand or less.

Fresh water flow: That flow which represents the amount of water passing a measurement point in a non-tidal system.

Harvestable shellfish waters: Waters from which shellfish may be taken and consumed; such waters are approved for shellfish harvesting by the State Board of Health.

Hydrolysis: A reaction of a chemical with water which results in the cleavage of a chemical bond.

Indigenous: Native, or naturally growing, existing, or produced.

Industrial Water Supply: Any water that is protected for use for industrial purposes, including non-contact cooling water.

Intake water: Water used by a facility from surface water, groundwater, commercial, or other sources.

Intermittent: Describes a stream which contains flowing water for extended periods during a year, but does not carry flow at all times.

Lethal concentration (LC): The point estimate of the

toxicant concentration that would be lethal to a given percentage of test organisms during a specific period.

Marine water: Waters of the State which contain natural levels of salinity in excess of 5 parts per thousand.

Migratory Fish Spawning and Nursery Designated Use: In the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River, the survival, growth and propagation of balanced indigenous populations of ecologically, recreationally and commercially important anadromous, semi-anadromous and tidal-fresh resident fish inhabiting spawning and nursery grounds from February 1 through May 31

Minimum Analytical Level: The lowest concentration of a substance that can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

NPDES: National Pollutant Discharge Elimination System as provided in the Clean Water Act.

Natural conditions: Water quality characteristics found or expected in the absence of human-induced pollution due to point or nonpoint sources.

Net advective flow: That flow which represents the difference between the amount of water passing a point in a tidal system on a flood tide and the subsequent ebb tide. It is approximately equal to the freshwater input to the system upstream of that point.

Normal Corrosion: An electrochemical reaction that results in the dissolution or removal of metal from a solid metal surface. For specific applications considered by the Department, normal corrosion rates shall be as published by the National Association of Corrosion Engineers (Reference: Corrosion Data Survey - Metals Section, National Association of Corrosion Engineers, 1985, as updated from time to time) or, for applications not specifically addressed in the above reference, such other reliable data.

Normal Erosion: The progressive loss of original material from a solid surface due to mechanical interaction between that surface and a fluid, a multi-component fluid or an impinging liquid or solid particle. (Reference: Standard Practice for Liquid Impingement Erosion Testing, ASTM Designation G73-82, 1987; or other authoritative source for materials or conditions not covered by the referenced standard).

Nuisance condition: Any condition that, as a result of pollutant addition to a stream, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

Nuisance species: Any species of fish, other animal, or plant living in or near the water, the presence of which causes unreasonable interference with the designated uses of the waters or the uses of adjoining land areas. Nuisance

species include but are not limited to filamentous and blue-green algae.

Nutrient: Any element or compound essential as a raw material for organism growth and development, including but not limited to nitrogen and phosphorus.

One-hour average: The arithmetic average of the samples collected during a continuous one-hour period.

Open-water fish and shellfish designated use: In the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River, the survival, growth and propagation of balanced indigenous populations of ecologically, recreationally and commercially important fish and shellfish inhabiting open water habitats year round

Overenrichment: Excessive addition of nutrients to a water body, resulting in deterioration of designated uses of the waters.

Perennial: Describes a freshwater stream which contains flowing water at all times.

Person: Any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, or any interstate body.

Photolysis: A light-catalyzed degradation reaction that occurs when light strikes certain chemicals.

Pollutant: Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil and product chemicals, and industrial, municipal, and agricultural waste discharged into water.

Practicable: Available and capable of being done after taking into consideration cost and existing technology, as well as logistics in light of overall facility operations or project purposes.

Primary contact recreation: Any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming and water skiing).

Propagation: Reproduction of fish, aquatic life and wildlife within their natural environment.

Public water supply: Any waters of the State designated as public water supply in Section 10.

Regulatory mixing zone: A designated, mathematically defined portion of a receiving water body, in close proximity to a discharge, in which initial dilution, dispersion, and reaction of discharged pollutants occur. See Section 6 for details on use of term.

Risk management level: That level above which an assessed risk is unacceptable from a public health perspective.

Scientifically Reasonable Request: Any request that is

based upon material, substantial, and relevant information and would be accepted as reasonable by most persons trained and competent in the subject of the request.

Scum: A thin layer of impurities which forms on the surface of waters of the State.

Secondary contact recreation: A water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of water (examples include but are not limited to wading, boating, and fishing).

Sedimentation: The movement of solid particles and adsorbed chemicals toward the bottom of the water column under the influence of gravity.

Shallow-water bay grass designated use: In the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River, the survival, growth and propagation of rooted, underwater bay grasses necessary for the propagation and growth of balanced indigenous populations of ecologically, recreationally and commercially important fish and shellfish inhabiting vegetated shallow-water habitats April 1 through October 31

Shellfish: Any species of fresh, brackish or salt water mollusk that is commonly considered to be edible. Typical edible mollusks include but are not limited to clams, mussels, oysters, scallops, and whelks.

Stream basin: A specified drainage area from which (in most cases) all waters exit through a single outlet.

Surface water: Water occurring generally on the surface of the earth.

Synergistic effect: The total effect of a mixture of pollutants which is greater than the arithmetic sum of the effects of the individual pollutants in the mixture.

Systemic toxicant: A toxic substance that has the ability to cause health effects within the body at sites distant from the entry point due to its absorption and distribution. Systemic toxicants are believed to have threshold concentrations or levels below which no health effects occur.

Tidal: Surface waters characterized by periodic rise and fall due to gravitational interactions between the sun, moon, and earth.

Toxic substance: Any substance or combination of substances including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in such organisms or their offspring.

Toxicity: The ability to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformities in organisms or their offspring.

Toxicity test:The means to determine the toxicity of a chemical or effluent using living organisms. A toxicity test measures the degree of response of an exposed test organism to a specific chemical or effluent.

True daily mean:The mean value for a parameter which accurately accounts for diurnal variations over one 24-hour period.

Use attainability analysis:A structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in Sections 9.1.1.1 through 9.1.1.8).

Volatilization:The loss of a chemical from the water column due to mass exchange across the air-water interface.

Water distribution piping and appurtenances:Pipes and piping systems, along with integral components thereof, which are used to convey water from one point to another.

Water pollution:Man-made or human-induced alteration of the chemical, physical, biological or radiological integrity of surface waters of the State.

Waters of the State:

(1) All surface waters of the State including but not limited to:

(a) Waters which are subject to the ebb and flow of the tide, including but not limited to estuaries, bays, and the Atlantic Ocean;

(b) All interstate waters, including interstate wetlands;

(c) All other waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sandflats, wetlands, sloughs, or natural or impounded ponds;

(d) All impoundments of waters otherwise defined as waters of the State under this definition;

(e) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (a)-(d);

(2) Waste and stormwater treatment systems, including but not limited to treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not waters of the State.

Waters of exceptional recreational or ecological

significance (ERES): Waters which are important, unique, or sensitive from a recreational and/or ecological perspective, but which may or may not have excellent water quality. Such waters shall normally have regional significance with respect to recreational use (fishing, swimming and boating), or have significant or widespread riverine, riparian, or wetland natural areas.

Water quality: The physical, chemical, and biological characteristics of water with respect to its suitability for a particular use. For the purposes of these Standards, water quality shall be assessed in terms of chemical composition, biological integrity, and physical habitat.

Water-Quality Based:Generally refers to requirements for pollution control that are in excess of technology-based minimum requirements, including but not limited to those listed in Sections 301(b) and 306 of the Clean Water Act. Such controls are designed to reduce pollutants to a level that will allow water quality standards to be attained where said standards would not be attained through application of the technology-based controls.

Water quality criterion:An element of water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular designated use.

Water quality standard:A rule or limit defined herein which consists of a designated use or uses for waters of the State and water quality criteria for such waters based upon such designated uses.

Wetlands:Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Section 3: Stream Basins & Designated Uses**

The designated uses applicable to the various stream basins represent the categories of beneficial use of waters of the state which must be maintained and protected through application of appropriate criteria.

<u>Basins and waterbodies as illustrated in Figure 1</u>		<u>Public Water Supply</u>	<u>Industrial Water Supply</u>	<u>Primary Contact Recreation</u>	<u>Secondary Contact Recreation</u>	<u>Fish, Aquatic Life &amp; Wildlife**</u>	<u>Cold Water Fish (Put-and-Take)</u>	<u>Agricultural Water Supply</u>	<u>ERES Waters*</u>	<u>Harvestable Shellfish Waters</u>
<u>#</u>	<u>Name</u>									
1	Naamans Creek	-	X	X	X	X	-	(a)	-	-
2	Shellpot Creek	-	X	X	X	X	-	(a)	-	-
3	Brandywine Creek	(a)	X	X	X	X	(b)	(a)	(h)	-

## FINAL REGULATIONS

4	<u>Red Clay Creek</u>	x	x	x	x	x	(e)	x	q	=
5	<u>White Clay Creek</u>	(a)	x	x	x	x	(f)	(a)	(g)	=
6	<u>Christina River</u>	(a)	x	x	x	x	(c)	(a)	-	=
7	<u>Delaware River</u>	-	-	x	x	x	-	(a)	-	=
8	<u>Army Creek</u>	-	-	x	x	x	-	(a)	-	=
9	<u>Red Lion Creek</u>	(a)(i)	x	x	x	x	-	(a)	-	=
10	<u>Dragon Run Creek</u>	(a)	x	x	x	x	-	(a)	-	=
11	<u>Chesapeake &amp; Delaware Canal East</u>	-	x	x	x	x	-	-	-	=
12	<u>Appoquinimink River</u>	-	x	x	x	x	-	(a)	-	=
13	<u>Blackbird Creek</u>	-	x	x	x	x	-	(a)	-	=
14	<u>Delaware Bay</u>	-	x	x	x	x	-	(a)		
15	<u>Smyrna River</u>	-	x	x	x	x	-	(a)	-	=
16	<u>Leipsic River</u>	-	x	x	x	x	-	(a)	-	=
17	<u>Little Creek</u>	-	x	x	x	x	-	(a)	-	=
18	<u>St. Jones River</u>	-	x	x	x	x	-	(a)	-	=
19	<u>Murderkill River</u>	-	x	x	x	x	-	(a)	-	=
20	<u>Mispillion River</u>	-	x	x	x	x		(a)		
21	<u>Cedar Creek</u>	-	x	x	x	x	-	(a)	(d)	=
22	<u>Broadkill River (k)</u>	-	x	x	x	x	-	(a)	-	=
23	<u>Elk Creek</u>	-	x	x	x	x	-	x	-	=
24	<u>Perch Creek</u>	-	x	x	x	x	-	x	-	=
25	<u>Chesapeake &amp; Delaware Canal West</u>	-	x	x	x	x	-	-	-	=
26	<u>Bohemia Creek</u>	-	x	x	x	x	-	x	-	=
27	<u>Sassafras River</u>	-	x	x	x	x	-	x	-	=
28	<u>Chester River</u>	-	x	x	x	x	-	x	-	=
29	<u>Choptank River</u>	-	x	x	x	x		x	-	
30	<u>Marshyhope Creek</u>	-	x	x	x	x	-	x	x	=
31	<u>Nanticoke River</u>	-	x	x	x	x (p)	-	(a)	x	=
32	<u>Gum Branch</u>	-	x	x	x	x	-	(a)	x	=
33	<u>Gravelly Branch</u>	-	x	x	x	x	-	(a)	x	=
34	<u>Deep Creek</u>	-	x	x	x	x	-	(a)	x	=
35	<u>Broad Creek</u>	-	x	x	x	x (p)	-	(a)	x	=
36	<u>Wicomico</u>	-	x	x	x	x	-	(a)	x	=
37	<u>Pocomoke River</u>	-	x	x	x	x	-	x	-	=
38	<u>Lewes &amp; Rehoboth Canal</u>	-	x	x	x	x	-	-	-	=
39	<u>Rehoboth Bay</u>	-	x	x	x	x	-	(a)	x	(j)
40	<u>Indian River</u>	-	x	x	x	x	-	(a)	(d)	=
41	<u>Iron Branch</u>	-	x	x	x	x	-	(a)	(d)	=
42	<u>Indian River Bay</u>	-	x	x	x	x	-	(a)	x	(j)
43	<u>Buntings Branch</u>	-	-	x	x	x	-	x	-	=
44	<u>Assawoman</u>	-	-	x	x	x	-	[x (a)]	[x]-	=
45	<u>Little Assawoman Bay</u>	-	x	x	x	x	-	(a)	x	=
	<u>Delaware Bay (waterbody) (l), (n)</u>	-	x	x	x	x	-	-	(m)	(j)

<u>Delaware River (Waterbody) (l) .(o)</u>	-	x	x	x	x	-	-	-	-
<u>Atlantic Ocean (waterbody)</u>	-	x	x	x	x	-	-	(m)	

- (a) Designated use for freshwater segments only.
- (b) Designated use from March 15 to June 30 on:
  1. Beaver Run from PA/DE line to Brandywine.
  2. Wilson Run Route 92 through Brandywine Creek State Park.
- (c) Designated use from March 15 to June 30 on:  
Christina River from MD/DE line through Rittenhouse Park.
- (d) Designated use for marine water segments only.
- (e) Designated use year round on:  
Red Clay Creek from PA/DE line to the concrete bridge above Yorklyn
- (f) Designated use year round on:
  1. White Clay Creek from the PA/DE line to the dam at Curtis Paper.  
Designated use from March 15 to June 30 on:
  2. Mill Creek from Brackenville Road to Route 7.
  3. Pike Creek from Route 72 to Henderson Road.
- (g) Designated use from PA/DE line to the dam at Curtis Paper.
- (h) Designated use from PA/DE line to Wilmington city line.
- (i) Goal use - not currently attained.
- (j) Parts of these waters are APPROVED shellfish harvesting areas. Information on areas where shellfish may be taken should be obtained from the Shellfish & Recreational Waters Branch, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control.
- (k) Includes Primehook Creek watershed.
- (l) Includes assorted minor watersheds not explicitly associated with any other designated stream basin.
- (m) The specific portions of the Atlantic Ocean and the Delaware Bay for which the ERES designation shall apply shall be delineated in the Pollution Control Strategy developed for each of those waterbodies. The ERES designation for the Atlantic Ocean and the Delaware Bay does not include water explicitly associated with any other designated stream basis (e.g., Delaware Bay does not include St. Jones River).
- (n) The Delaware Bay extends from River Mile 0.0 to 48.2 as shown on Figure 1.
- (o) The Delaware River extends from River Mile 48.2 to 78.8 as shown in Figure 1.
- (p) The Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and the Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River have special criteria in Section 4.5 that are protective of open water fish and shellfish, shallow-water bay grass and

migratory fish spawning and nursery designated uses consistent with the Maryland portion of the tidal Nanticoke River and as described in the U.S. Environmental Protection Agency document Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002). Attainment of the water quality criteria that apply to these waters will be determined following the guidelines documented within the same document and any future published addendums or modifications to that original publication.

(q) ERES designation is for Burrows Run from the Pennsylvania Line to the confluence with Red Clay Creek

(r) this designated water use to be protected throughout entire stream basin

- water uses not designated in the stream basin
- \* waters of exceptional recreational or ecological significance
- \*\* includes shellfish propagation

**Figure 1 Delaware Watersheds and Waterbodies (Has been moved to the end of the Regulation)**

Basin Boundaries to be used in determination of standards applicability are on file with the DNREC Division of Water Resources.

**Section 4: Criteria To Protect Designated Uses**

4.1 All surface waters of the State (except as detailed in Sections 7 and 8) shall meet the following minimum criteria:

4.1.1 Waters shall be free from substances that are attributable to wastes of industrial, municipal, agricultural or other human-induced origin. Examples include but are not limited to the following:

4.1.1.1 Floating debris, oil, grease, scum, foam, or other materials on the water surface that may create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

4.1.1.2 Settleable solids, sediments, sludge deposits, or suspended particles that may coat or cover submerged surfaces and create a nuisance condition, or that may in any way interfere with attainment and maintenance of designated uses of the water.

4.1.1.3 Any pollutants, including those of a thermal, toxic, corrosive, bacteriological, radiological, or other nature, that may interfere with attainment and maintenance of designated uses of the water, may impart undesirable odors, tastes, or colors to the water or to aquatic life found therein, may endanger public health, or may result

in dominance of nuisance species.

4.2 Narrative Criteria for Waters With the Public Water Supply Designated Use

4.2.1 Streams with a designated use of public water supply shall provide waters of acceptable quality for use for drinking, culinary or food processing purposes after application of approved treatment equivalent to coagulation, filtration, and disinfection (with additional treatment as necessary to remove naturally occurring impurities). The untreated waters are subject to the following limitations:

4.2.1.1 Waters shall be free from substances (except natural impurities) that, alone or in combination with other substances, result in:

4.2.1.1.1 Unacceptable levels of taste or odor in the treated water;

4.2.1.1.2 Significant disruption of the treatment processes at the treatment facility; or

4.2.1.1.3 Concentrations of toxic substances in the treated water that may be harmful to human health. The requirements of Section 4.5.10 shall apply.

4.3 Certain waters of the State are subject to natural variations in salinity such that those waters meet the definition of fresh at some times and marine at other times. For such waters, the more stringent of fresh or marine water quality criteria or standards as detailed throughout this document shall apply at all times unless otherwise specified by the Department.

4.4 Coordination with Delaware River Basin Commission:

For waters of the Delaware River and Delaware Bay, duly adopted Delaware River Basin Commission (DRBC) Water Quality Regulations shall be the applicable criteria. If the DRBC has not developed an applicable regulatory standard or criteria for these waters, and Delaware has, Delaware's criteria shall be applicable.

4.5 The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

4.5.1 Temperature, measured as Fahrenheit Degrees

4.5.1.1 Fresh Waters

4.5.1.1.1 Maximum increase above natural conditions shall be 5°F.

4.5.1.1.2 No human-induced increase of the true daily mean temperature above 82°F shall be allowed.

4.5.1.1.3 No human-induced increase of the daily maximum temperature above 86°F shall be allowed.

4.5.1.2 Marine Waters

4.5.1.2.1 Maximum increase above natural conditions shall be 4°F from October through May. Temperature rise during June through September shall be limited by the following conditions:

4.5.1.2.2 No human-induced increase of the true daily mean temperature above 84°F shall be allowed; and

4.5.1.2.3 No human-induced increase of the daily maximum temperature above 87°F shall be allowed.

4.5.1.3 Cold Water Fisheries (Put and Take)

4.5.1.3.1 Maximum increase above natural conditions shall be 5°F.

4.5.1.3.2 No human-induced increase of the true daily mean temperature above 75°F, shall be allowed

4.5.1.4 In all waters of the state, the Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

4.5.2 Dissolved Oxygen, measured as milligrams per liter (mg/L)

4.5.2.1 Fresh Waters

4.5.2.1.1 Daily average shall not be less than 5.5 mg/L.

4.5.2.1.2 Instantaneous minimum shall not be less than 4.0 mg/L

4.5.2.2 Marine Waters

4.5.2.2.1 Daily average shall not be less than 5.0 mg/L.

4.5.2.2.2 Instantaneous Minimum shall not be less than 4.0 mg/L

4.5.2.3 Cold Water Fisheries (Put and Take)

4.5.2.3.1 Daily average shall not be less than 6.5 mg/L during the applicable period.

4.5.2.3.2 Instantaneous Minimum shall not be less than 5.0 mg/L during the applicable period.

4.5.2.4 The Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River

At water temperatures greater than 84 degrees Fahrenheit, instantaneous minimum shall not be less than 4.3 mg/L

4.5.2.4.1 For the period February 1-May 31:

4.5.2.4.1.1 7-Day mean shall not be less than 6.0 mg/L

4.5.2.4.1.2 Instantaneous minimum shall not be less than 5.0 mg/L

4.5.2.4.2 For June 1- January 31

4.5.2.4.2.1 30 Day mean shall not be less than 5.5 mg/L

4.5.2.4.2.2 7-Day mean shall not be less than 4.0 mg/L

4.5.2.4.2.3 Instantaneous minimum

shall not be less than 3.2 mg/L

4.5.2.5 All Waters

4.5.2.5.1 In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 5 and 9 of these Standards.

4.5.2.5.2 The Department may mandate additional limitations on a site-specific or seasonal basis in order to provide incremental protection for early life stages of fish.

4.5.3 pH, measured in standard units, in all waters of the state

4.5.3.1 Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.

4.5.3.2 Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.

4.5.4 Alkalinity, measured as mg/L as CaCO<sub>3</sub>, in all waters of the State shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.

4.5.5 Turbidity Measured as Nephelometric or Formazin Turbidity Units, in all waters of the State shall not exceed natural levels by more than 10 units.

4.5.6 Water Clarity in the The Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River

During the period of April 1 to October 31 the minimum seasonal averaged secchi depth shall be 1.0 m.

4.5.6.1 Chlorophyll-*a* criteria for the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River:

Concentrations of chlorophyll-*a* in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in ecologically undesirable consequences - such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions or otherwise render tidal waters unsuitable for designated uses.

4.5.7 Bacterial Water Quality Criteria

4.5.7.1 Primary and Secondary Contact Recreation Waters:

The following criteria shall apply:

<u>Waterbody Type</u>	<u>Single-Sample Value (Enterococcus Colonies/100ml)</u>	<u>Geometric Mean (Enterococcus Colonies/100ml)</u>
<u>Primary Contact Recreation Fresh Waters</u>	<u>185</u>	<u>100</u>
<u>Primary Contact Recreation Marine Waters</u>	<u>104</u>	<u>35</u>
<u>Secondary Contact Recreation Fresh Waters</u>	<u>925</u>	<u>500</u>
<u>Secondary Contact Recreation Marine Waters</u>	<u>520</u>	<u>175</u>

The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State and to meet Federal BEACH Act Requirements. The criteria apply to enterococcus bacteria determined by the Department to be of non-wildlife origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness and is not recommended.

4.5.7.2 Harvestable Shellfish waters:

The total coliform median MPN of the water shall not exceed 70/100 mL, nor shall more than 10% of the samples have an MPN in excess of 330/100 mL for a 3 decimal dilution test (or 230/100 mL where the 5 tube decimal test is used). These criteria shall be verified through sampling of those portions of the shellfish area most probably exposed to fecal contamination for those tidal and climatic conditions most likely to result in contamination of the shellfish area.

4.5.8 Nutrients

Nutrient overenrichment is recognized as a significant problem in some surface waters of the State.

4.5.8.1 It shall be the policy of this Department to minimize nutrient input to surface waters from point and human induced non-point sources.

4.5.8.2 The types of, and need for, nutrient controls shall be established on a site-specific basis. Nutrient controls may include, but shall not be limited to, discharge limitations or institution of best management practices.

4.5.8.3 For lakes and ponds, controls shall be designed to eliminate overenrichment.

4.5.8.4 For tidal portions of the stream basins of Indian River, Rehoboth Bay, and Little Assawoman Bay, controls needed to attain submerged aquatic vegetation growth season (approximately March 1 to October 31)

average levels for dissolved inorganic nitrogen of 0.14 mg/L as N, for dissolved inorganic phosphorus of 0.01 mg/L as P, and for total suspended solids of 20 mg/L shall be instituted.

4.5.8.5 The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 5.6.3.4 of these standards.

#### 4.5.9 Toxic Substances

4.5.9.1 Applicability: Criteria set forth in this section apply to all surface waters of the State, except as provided in Section 6, Regulatory Mixing Zones, Section 7, Critical Flows, and Section 8, Criteria for Low Flow Waters.

#### 4.5.9.2 General Provisions:

4.5.9.2.1 Waters of the State shall not exhibit acute toxicity to fish, aquatic life, and wildlife, except in special cases applying to regulatory mixing zones as provided in Section 6.

4.5.9.2.2 Waters of the State shall not exhibit chronic toxicity to fish, aquatic life, and wildlife, except in regulatory mixing zones as provided in Section 6, at flows less than critical flows as provided in Section 7, or in low flow waters as provided in Section 8.

4.5.9.2.3 Waters of the State shall be maintained to prevent adverse toxic effects on human health resulting from ingestion of chemically contaminated aquatic organisms and drinking water.

4.5.9.2.4 The Department may consider synergistic, antagonistic, and additive impacts of combinations of toxicants to fish, aquatic life, and wildlife, and human health in assessing aggregate environmental impacts and mandating point and nonpoint source controls.

#### 4.5.9.3 Specific Numerical Criteria:

##### 4.5.9.3.1 Aquatic Life Criteria:

4.5.9.3.1.1 Aquatic Life Criteria for Aluminum, Iron, and Selenium in Table 1 are expressed on a total recoverable basis. Criteria for Cyanide in Table 1 are expressed as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination. Criteria for all other metals in Table 1 are expressed on a total dissolved basis. For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Appropriate pH or hardness values for such criteria shall be determined on a case-by-case basis by the Department.

4.5.9.3.1.2 Specific numerical acute criteria as presented in Table 1 are applied as one-hour average concentrations not to be exceeded more than once in any three-year period. Specific numerical chronic criteria as presented Table 1 are applied as four-day average concentrations not to be exceeded more than once in any three-year period.

4.5.9.3.1.3 For toxic substances for which specific numerical criteria are not listed in Table 1,

concentrations shall not exceed those which are chronically toxic (as determined from appropriate chronic toxicity data or calculated as 0.1 of LC50 values) to representative, sensitive aquatic organisms, except as provided in Section 6, Regulatory Mixing Zones, Section 7, Critical Flows, or Section 8, Criteria for Low Flow Waters. Concentrations so determined shall be applied as four-day average concentrations not to be exceeded more than once in any three-year period.

#### 4.5.9.3.2 Human Health Criteria

4.5.9.3.2.1 Water quality criteria appearing in Table 2 for pollutants identified as carcinogens have been established at an upper bound worst case risk management level of one excess cancer in a population of one million ( $1 \times 10^{-6}$ ) over a 70 year lifetime. Criteria listed under the columns header "Fish and Water Ingestion" apply only to surface waters of the State designated as Public Water Supply Sources in Section 3 of these Standards. Criteria listed under columns headed "Fish Ingestion Only" apply to all surface waters of the State not designated as Public Water Supply Sources in Section 3 of these Standards.

4.5.9.3.2.2 For compounds in Table 2 which are considered as both systemic toxicants and human carcinogens, criteria based on both human health concerns are presented. In determining pollution control requirements, the more stringent criterion, after consideration of critical (design) flows in Section 7, shall be utilized.

### **TABLE 1** **WATER QUALITY CRITERIA FOR PROTECTION** **OF AQUATIC LIFE**

(All Values Are Listed or Calculated in Micrograms Per Liter)

<u>Parameter</u>	<u>Fresh Acute Criterion</u>	<u>Fresh Chronic Criterion</u>	<u>Marine Acute Criterion</u>	<u>Marine Chronic Criterion</u>
<u>Aldrin</u>	<u>3.0</u>	==	<u>1.3</u>	==
<u>Aluminum pH6.5-9.0</u>	<u>750.</u>	<u>87.</u>	==	==
<u>Ammonia</u>	<u>Temperature and pH dependent, see formula after this table</u>	<u>Temperature and pH dependent, see formula after this table</u>		
<u>Arsenic (III)*</u>	<u>340.</u>	<u>150</u>	<u>69.</u>	<u>36.</u>
<u>Cadmium*</u>	<u>(1.136672- LN(hardness)*0.041838)* EXP(1.0166*LN(hardness)-3.924)</u>	<u>(1.101672- LN(hardness)*0.041838)* EXP(0.7409*LN(hardness)-4.719)</u>	<u>40.</u>	<u>8.8</u>
<u>Chlordane</u>	<u>2.4</u>	<u>0.0043</u>	<u>0.09</u>	<u>0.004</u>
<u>Chlorine</u>	<u>19</u>	<u>11.</u>	<u>13</u>	<u>7.5</u>
<u>Chlorpyrifos (Dursban)</u>	<u>0.083</u>	<u>0.041</u>	<u>0.011</u>	<u>0.0056</u>
<u>Chromium (III)*</u>	<u>0.316*EXP(0.819*LN(hardness))</u>	<u>0.86*EXP(0.819*LN(hardness)+0.6848)</u>	==	==
<u>Chromium (VI)*</u>	<u>16.</u>	<u>11.</u>	<u>1,100.</u>	<u>50.</u>
<u>Copper*</u>	<u>0.96*EXP(0.9422*LN(hardness))</u>	<u>0.96*EXP(0.8545*LN(hardness)-1.702)</u>	<u>4.8</u>	<u>3.1</u>
<u>Cyanide<sup>1</sup></u>	<u>22.</u>	<u>5.2</u>	<u>1.0</u>	==
<u>DDT and Metabolites (DDD and DDE)</u>	<u>1.1</u>	<u>0.0010</u>	<u>0.13</u>	<u>0.0010</u>
<u>Demeton</u>	==	<u>0.10</u>	==	<u>0.10</u>
<u>Dieldrin</u>	<u>0.24</u>	<u>.056</u>	<u>0.71</u>	<u>0.0019</u>
<u>Endosulfan</u>	<u>0.22</u>	<u>0.056</u>	<u>0.034</u>	<u>0.0087</u>
<u>Endrin</u>	<u>.086</u>	<u>.036</u>	<u>0.037</u>	<u>0.0023</u>
<u>Guthion</u>	==	<u>0.01</u>	==	<u>0.01</u>
<u>Heptachlor</u>	<u>0.52</u>	<u>0.0038</u>	<u>0.053</u>	<u>0.0036</u>
<u>Hexachloro-cyclohexane</u>	<u>.095</u>	<u>0.08</u>	<u>0.16</u>	==
<u>Iron</u>	==	<u>1000.</u>	==	==
<u>Lead*</u>	<u>(1.46203- LN(hardness)*0.145712)* EXP(1.273*LN(hardness)-1.460)</u>	<u>(1.46203- LN(hardness)*0.145712)* EXP(1.273*LN(hardness)-4.705)</u>	<u>210.</u>	<u>8.1</u>
<u>Malathion</u>	==	<u>0.1</u>	==	<u>0.1</u>
<u>Mercury (II)*</u>	<u>1.4</u>	<u>.077</u>	<u>1.8</u>	<u>0.94</u>
<u>Methoxychlor</u>	==	<u>0.03</u>	==	<u>0.03</u>
<u>Mirex</u>	==	<u>0.001</u>	==	<u>0.001</u>

Nickel*	$0.998 * EXP^{(0.8460 * LN(hardness))}$	$0.997 * EXP^{(0.8460 * LN(hardness) + 0.05)}$	74.	8.2
Total PCBs		0.014		0.03
Parathion	0.065	0.013	=	=
Pentachlorophenol	$EXP^{(1.005 * pH - 4.869)}$	$EXP^{(1.005 * pH - 5.134)}$	13.	7.9
Selenium	20	5.0	290	71.
Silver*	$0.85 * EXP^{(1.72 * LN(hardness))}$	=	1.9	=
Toxaphene	0.73	0.0002	0.21	0.0002
Zinc*	$0.978 * EXP^{(0.8473 * LN(hardness))}$	$0.986 * EXP^{(0.8473 * LN(hardness) + 0.88)}$	90	81

$$\text{Criterion} = \frac{1.45 * 10^{0.028 * (25 - \text{MAX}(T, 7))}}{1 + 10^{7.688 - \text{pH}}} + \frac{1.45 * 10^{0.028 * (25 - \text{MAX}(T, 7))}}{1 + 10^{\text{pH} - 7.688}}$$

Notes:

<sup>1</sup>Cyanide measured as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination.

Formulas in the table have been formatted so that they can be copied directly into spreadsheets to calculate criteria. Criteria are calculated to two significant figures.

LN = natural log base e

EXP = e = 2.71828

Hardness is expressed as mg/L as CaCO<sub>3</sub>

pH is expressed as Standard Units

\* Criteria is for total dissolved form

**Calculation of Freshwater Acute Ammonia Criterion:**

Where salmonid fish are present:

$$\frac{0.275}{1 + 10^{7.204 - \text{pH}}} + \frac{39.0}{1 + 10^{\text{pH} - 7.204}}$$

$$\text{Criterion} = \frac{0.275}{1 + 10^{7.204 - \text{pH}}} + \frac{39.0}{1 + 10^{\text{pH} - 7.204}}$$

Or where salmonid fish are not present:

$$\frac{0.411}{1 + 10^{7.204 - \text{pH}}} + \frac{58.4}{1 + 10^{\text{pH} - 7.204}}$$

$$\text{Criterion} = \frac{0.411}{1 + 10^{7.204 - \text{pH}}} + \frac{58.4}{1 + 10^{\text{pH} - 7.204}}$$

**Calculation of Freshwater Chronic Ammonia Criterion:**

The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

When fish early life stages are present:

$$\frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}}$$

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * \text{MIN}(2.85, 1.45 * 10^{0.028 * (25 - T)})$$

When fish early life stages are absent:

$$\frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}}$$

**Additional Freshwater Chronic Ammonia Criterion:**

The highest four-day average within the 30-day period shall not exceed 2.5 times the chronic criterion.

**TABLE 2  
WATER QUALITY CRITERIA FOR PROTECTION  
OF HUMAN HEALTH**

(All Values Are Listed in Micrograms per Liter)

Chemical	Systemic Toxicants		Human Carcinogens	
	Fish Ingestion	Fish and Water Ingestion	Fish Ingestion	Fish and Water Ingestion
Acenaphthene	990	670		
Acrolein	300	190		
Acrylonitrile			0.25	0.051
Aldrin	0.025	0.025	0.00005	0.000049
Anthracene	40000	8300		
Antimony	1600	6 (MCL)		
Arsenic (inorganic)		10 (MCL)		
Asbestos		7 million fibers/L (MCL)		
barium		2000 (MCL)		
Benzene	3100	5 (MCL)	14	0.61
Benzidine	140	59	0.00019	0.000086
Benzo(a)Anthracene			0.18	0.038

# FINAL REGULATIONS

185

<u>Benzo(a)Pyrene</u>		<u>0.2 (MCL)</u>	<u>0.018</u>	<u>0.0038</u>
<u>Benzo(b)Fluoranthene</u>			<u>0.18</u>	<u>0.038</u>
<u>Beryllium</u>	<u>420</u>	<u>4 (MCL)</u>	<u>0.024</u>	<u>0.0034</u>
<u>Bis(2-Chloroethyl)Ether</u>			<u>0.53</u>	<u>0.03</u>
<u>Bis(2-Chloroisopropyl)Ether</u>	<u>65000</u>	<u>1400</u>		
<u>Bis(2-Ethylhexyl)Phthalate</u>	<u>620</u>	<u>6 (MCL)</u>	<u>2.2</u>	<u>1.2</u>
<u>Bromoform</u>	<u>9600</u>	<u>650</u>	<u>61</u>	<u>4.1</u>
<u>Butylbenzyl Phthalate</u>	<u>1900</u>	<u>1500</u>		
<u>Cadmium</u>	<u>31</u>	<u>5 (MCL)</u>		
<u>Carbon Tetrachloride</u>	<u>150</u>	<u>5 (MCL)</u>	<u>1.6</u>	<u>0.23</u>
<u>Chlordane</u>	<u>0.14</u>	<u>0.14</u>	<u>0.00081</u>	<u>0.0008</u>
<u>Chlorobenzene</u>	<u>7800</u>	<u>100 (MCL)</u>		
<u>Chlorodibromomethane</u>	<u>21000</u>	<u>680</u>	<u>13</u>	<u>0.4</u>
<u>Chloroform</u>	<u>11000</u>	<u>340</u>		
<u>2-Chloronaphthalene</u>	<u>1600</u>	<u>1000</u>		
<u>2-Chlorophenol</u>	<u>150</u>	<u>81</u>		
<u>Chromium (III)</u>	<u>380000</u>	<u>100 (MCL)</u>		
<u>Chromium (VI)</u>	<u>750</u>	<u>92</u>		
<u>Chromium</u>		<u>100 (MCL)</u>		
<u>Chrysene</u>			<u>0.18</u>	<u>0.038</u>
<u>Copper</u>		<u>1300 (MCL)</u>		
<u>Cyanide</u>	<u>80000</u>	<u>200</u>		
<u>DDT and Metabolites (DDD and DDE)</u>	<u>0.037</u>	<u>0.037</u>	<u>0.00022</u>	<u>0.00022</u>
<u>Dibenzo(a,h)Anthracene</u>			<u>0.018</u>	<u>0.0038</u>
<u>1,2-Dichlorobenzene</u>	<u>6500</u>	<u>600 (MCL)</u>		

<u>1,3-Dichlorobenzene</u>	<u>1300</u>	<u>350</u>		
<u>1,4-Dichlorobenzene</u>	<u>1400</u>	<u>75 (MCL)</u>		
<u>3,3'-Dichlorobenzidine</u>			<u>0.028</u>	<u>0.021</u>
<u>Dichlorobromomethane</u>		<u>680</u>	<u>17</u>	<u>0.55</u>
<u>1,2-Dichloroethane</u>		<u>5 (MCL)</u>	<u>37</u>	<u>0.38</u>
<u>1,1-Dichloroethylene</u>	<u>36000</u>	<u>7 (MCL)</u>	<u>1.2</u>	<u>0.056</u>
<u>Dichloromethane</u>	<u>260000</u>	<u>5 (MCL)</u>	<u>590</u>	<u>4.6</u>
<u>2,4-Dichlorophenol</u>	<u>290</u>	<u>77</u>		
<u>2,4-Dichlorophenoxyacetic acid (2,4-D)</u>		<u>70 (MCL)</u>		
<u>1,2-Dichloropropane</u>			<u>15</u>	<u>0.5</u>
<u>1,3-Dichloropropane</u>	<u>63000</u>	<u>1000</u>	<u>42</u>	<u>0.69</u>
<u>Dieldrin</u>	<u>0.043</u>	<u>0.041</u>	<u>0.000054</u>	<u>0.000052</u>
<u>Diethyl Phthalate</u>	<u>44000</u>	<u>17000</u>		
<u>Dimethyl Phthalate</u>	<u>1100000</u>	<u>270000</u>		
<u>2,4-Dimethylphenol</u>	<u>850</u>	<u>380</u>		
<u>Di-n-Butyl Phthalate</u>	<u>4500</u>	<u>2000</u>		
<u>2,4-Dinitrophenol</u>	<u>5300</u>	<u>69</u>		
<u>2,4-Dinitrotoluene</u>	<u>2100</u>	<u>68</u>	<del>[28</del> <u>3, 4]</u>	<del>[0.92</del> <u>0.11]</u>
<u>2,3,7,8-TCDD (Dioxin) [(as TEQ<sup>1</sup>)]</u>		<u>0.00003 (MCL)</u>	<u>5.1E-09</u>	<u>5.0 E-09</u>

1,2-Diphenylhydrazine			0.2	0.036
Endosulfan	89	62		
Endrin	0.3	0.29		
Endrin Aldehyde	0.3	0.29		
Ethylbenzene	11000	700 (MCL)		
Fluoranthene	140	130		
Fluorene	5300	1108		
Fluoride		4000 (MCL)		
Heptachlor	0.18	0.18	0.000079	0.000079
Heptachlor Epoxide	0.0046	0.0046	0.000039	0.000039
Hexachlorobenzene	0.36	0.35	0.00028	0.00028
Hexachlorobutadiene	2900	68	18	0.44
Hexachlorocyclohexane			0.017	0.0091
Hexachlorocyclopentadiene	5500	50 (MCL)		
Hexachloroethane	46	20	3.3	1.4
Indeno(1,2,3-cd)pyrene			0.18	0.038
Isophorone	180000	6700	960	35
Lead		15 (MCL)		
alpha-BHC		0.2 (MCL)	0.0048	0.0026
beta-BHC		0.2 (MCL)	0.017	0.0091
gamma-BHC (Lindane)	9.2	0.2 (MCL)	0.23	0.12
Methyl Mercury	0.3mg/kg fish tissue	0.3mg/kg fish tissue		
Methoxychlor		40 (MCL)		
Methyl Bromide	1500	47		
3-Methyl-4-Chlorophenol				
Nickel (soluble salts)	1700	100 (MCL)		
Nitrate		10000 (MCL)		
Nitrobenzene	690	17		
N-Nitrosodimethylamine			3	0.00069

N-Nitrosodi-n-Propylamine			0.51	0.005
N-Nitrosodiphenylamine			6	3.3
Pentachlorophenol	11000	1 (MCL)	3	0.27
Phenol	860000	10000		
Polychlorinated Biphenyls PCBs:		0.5 (MCL)	0.000064	0.000064
Pyrene	4000	830		
Selenium	4200	50 (MCL)		
Silver	40000	170		
1,1,2,2-Tetrachloroethane			4	0.17
Tetrachloroethylene	1300	5 (MCL)	3.3	0.69
Thallium	18	2 (MCL)		
Toluene	75000	1000 (MCL)		
Total Trihalomethanes (TTHM)		80 (MCL)		80
Toxaphene		3 (MCL)	0.00028	0.00028
1,2-Trans-Dichloroethylene	51000	100 (MCL)		
1,2,4-Trichlorobenzene	350	70 (MCL)		
1,1,1-Trichloroethane		200 (MCL)		
1,1,2-Trichloroethane	3600	5 (MCL)	16	0.59
Trichloroethylene		5 (MCL)	30	2.5
2,4,6-Trichlorophenol			2.4	1.4
2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP-Silvex)		50 (MCL)		
Vinyl Chloride	10000	2 (MCL)	2.4	0.025
Zinc	26000	7400		

The columns labeled "Fish and Water Ingestion" shall apply only to waters of the State designated Public Water Supply sources in these standards.

The column labeled "Fish Ingestion Only" shall apply to all-waters of the State not designated Public Water Supply sources in this document.

\*\*Values shown with "(MCL)" under header "Fish and Water Ingestion" are Primary Maximum Contaminant Levels (MCLs) as given in the State of Delaware Regulations Governing Public Drinking Water Systems that became effective September 10, 2001

[<sup>1</sup> Criteria is for the "total toxic equivalence (TEQ) to 2,3,7,8-TCDD". The toxic equivalence for a sample is the sum of the concentration for each congener multiplied by its associated Toxicity Equivalence Factor (TEF) listed in table below.

$$TEQ = ((\text{Concentration of Congener in sample}) \times (TEF))$$

where the TEF is unitless and the concentration is in ug/l.

Congener	TEF value
<i>Dibenzo-p-dioxins</i>	
2,3,7,8-TCDD	1
1,2,3,7,8-PnCDD	1
1,2,3,4,7,8-HxCDD	0.1
1,2,3,6,7,8-HxCDD	0.1
1,2,3,7,8,9-HxCDD	0.1
1,2,3,4,6,7,8-HpCDD	0.01
OCDD	0.0001
<i>Dibenzofurans</i>	
2,3,7,8-TCDF	0.1
1,2,3,7,8-PnCDF	0.05
2,3,4,7,8-PnCDF	0.5
1,2,3,4,7,8-HxCDF	0.1
1,2,3,6,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDF	0.1
2,3,4,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDF	0.01
1,2,3,4,7,8,9-HpCDF	0.01
OCDF	0.0001
<i>Non-ortho PCBs</i>	
PCB 77	0.0001
PCB 81	0.0001
PCB 126	0.1
PCB 169	0.01
<i>Mono-ortho PCBs</i>	
PCB 105	0.0001
PCB 114	0.0005

PCB 118	0.0001
PCB 123	0.0001
PCB 156	0.0005
PCB 157	0.0005
PCB 167	0.00001
PCB 189	0.0001]

**Section 5: Antidegradation and ERES Waters Policies**

5.1 Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Degradation of water quality in such a manner that results in reduced number, quality, or river or stream mileage of existing uses shall be prohibited. Degradation shall be defined for the purposes of this section as a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.

5.2 Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected. In the case of waters of exceptional recreational or ecological significance, existing quality shall be maintained or enhanced. Limited degradation may be allowed if the Department finds, after full satisfaction of public participation provisions of 7 Del. Code Sections 6004 and 6006 and the intergovernmental coordination provisions of the State's continuing planning process as required in 40 CFR Part 130, that allowing lower water quality is necessary to accommodate important social or economic development, or would result in a substantial net environmental or public health benefit, in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure maintenance of water quality adequate for full protection of existing uses. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

5.3 Where high quality waters constitute an outstanding National resource, such as waters of National parks and wildlife refuges, existing quality shall be maintained and protected.

5.4 In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Water Quality Act of 1987.

5.5 The hearing requirement imposed by Subsections 5.2 above shall not be construed to impose a requirement for an additional public hearing where such a hearing is otherwise held pursuant to law, provided the requirements of this section are hereby met.

5.6 Criteria for Waters of Exceptional Recreational or Ecological Significance (ERES Waters)

5.6.1 General Policy

5.6.1.1 Designated ERES waters shall be accorded a level of protection and monitoring in excess of that provided most other waters of the State. These waters are recognized as special natural assets of the State, and must be protected and enhanced for the benefit of present and future generations of Delawareans.

5.6.1.2 ERES waters shall be restored, to the maximum extent practicable, to their natural condition. To this end, the Department shall, through adoption of a pollution control strategy for each ERES stream basin, take appropriate action to cause the systematic control, reduction, or removal of existing pollution sources, and the diversion of new pollution sources, away from ERES waters.

5.6.1.3 Discharges to ERES waters shall be avoided to the maximum extent practicable. In order to be permitted, a discharge must be the least environmentally damaging practicable alternative.

5.6.1.4 Prior to any public notice for a discharge permit required pursuant to 7 Del. Code Chapter 60, the Department shall make a determination that potential impacts have been avoided to the maximum extent practicable, and that remaining unavoidable impacts will be minimized to the extent appropriate and practicable. Findings shall be based upon appropriate factual determinations, evaluations, and tests with special emphasis on the persistence and permanence of the impacts. Under this provision impacts considered individually or collectively include:

5.6.1.4.1 Impacts of pollutants on human health and welfare;

5.6.1.4.2 Impacts of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems including, but not limited to, the transfer, concentration, and spread of pollutants or their by-products through biological, physical, and chemical processes;

5.6.1.4.3 Impacts of pollutants on aquatic ecosystem diversity, productivity, and stability. Such impacts may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

5.6.1.4.4 Impacts on recreational, aesthetic, and economic values.

5.6.1.5 Any applicant for a discharge permit required pursuant to 7 Del. Code Chapter 60 shall provide to the Department, as part of a complete application, a resource assessment tailored to the site performed by qualified professionals. Such assessments shall fully consider ecological functions and values in light of the policies set forth in these standards. Consideration shall be given to:

5.6.1.5.1 Potential impacts on physical and chemical characteristics of the aquatic ecosystems which

shall include, but not be limited to, substrates, substrate particulates/turbidity, water, current patterns, water circulation, normal water fluctuations, and salinity gradients;

5.6.1.5.2 Potential impacts on biological characteristics of the aquatic ecosystem which shall include, but not be limited to, fish, crustaceans, mollusks and other organisms in the food web, other wildlife, and threatened or endangered species; and

5.6.1.5.3 Potential effects on human use characteristics which shall include, but not be limited to, water supplies, recreational and commercial fisheries, water related recreation, aesthetics, parks, research sites, wildlife areas or public access areas.

5.6.2 General Provisions

5.6.2.1 In cases where natural conditions prevent attainment of applicable fresh or marine dissolved oxygen criteria, reduction in dissolved oxygen levels as a result of human activities shall be prohibited.

5.6.2.2 All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove nutrients to the extent necessary to prevent excessive growth of photosynthetic organisms.

5.6.2.3 All point, and human induced nonpoint sources subject to control through use of best management practices or otherwise, shall be required to remove particulate matter to the extent necessary to minimize turbidity.

5.6.2.4 ERES waters shall not exhibit toxicity within aquatic habitats commonly used by native or migratory aquatic, terrestrial, and avian species. Such habitats include, but may not be limited to, spawning sites, nursery areas, forage areas, and migratory pathways.

5.6.2.5 ERES standards shall not apply in excavated waters. All other appropriate criteria shall remain in force for these waters.

5.6.2.6 The ERES criteria set forth in Section 5.6 supplement all other applicable requirements of these standards for ERES waters. Nothing in Section 5.6 relieves or reduces the obligation of any person to comply with other requirements of these Standards, federal or state laws and regulations.

5.6.3 Pollution Prevention

5.6.3.1 Existing Sources: For the purposes of this Section, an existing source shall be defined as a discharge for which a permit has been issued by the Department pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991. In the case of a water body designated as ERES waters pursuant to Section 3 of the Standards, the Department shall not issue or reissue a permit for an existing source unless the applicant demonstrates a utilization of all economically feasible and reasonably available waste minimization practices and technologies, and the lack of feasible alternative production processes and disposal

options.

5.6.3.2 The provisions of Subsections 5.6.1.4, 5.6.1.5, and 5.6.3.1 shall apply to existing sources on January 1, 1996, or upon adoption of a Pollution Control Strategy as provided in Section 5.6.3.5, whichever occurs first. In either event, the provisions of Section 5.6, including all requirements of the Pollution Control Strategy shall apply to existing sources.

5.6.3.3 Increased or New Sources: For the purposes of Section 5.6, new sources are those discharges for which a permit has not been issued pursuant to 7 Del. Code Chapter 60 prior to January 1, 1991, and increased sources are those discharges for which there is an increase in the mass loading of any pollutant of concern from any existing source. For the purposes of Section 5.6, pollutants of concern are the following: oxygen demanding substances (as may be measured by BOD and COD), nitrogen, phosphorous, bacteria, heat, and total suspended solids. In the case of any waterbody designated as ERES waters pursuant to Section 3 of the Standards, the Department shall not issue or reissue a permit pursuant to 7 Del. Code Chapter 60 that allows an increase in or new source of pollutant loadings of pollutants of concern unless the applicant demonstrates:

5.6.3.3.1 A need to discharge based upon a showing of the full utilization of measures, processes, methods, systems or techniques to eliminate the discharge altogether or minimize waste loadings through process changes, substitution of materials, enclosure of systems or other modifications. This can be demonstrated through the full utilization of available waste minimization practices and technologies and the lack of feasible alternative production processes and disposal options; and

5.6.3.3.2 That a proposed new discharge or any increase in loading of pollutants of concern of an existing discharge is consistent with the Pollution Control Strategy for the basin. Prior to adoption of a Pollution Control Strategy for a stream basin no increase in loadings of pollutants of concern shall be allowed to the stream basin from a surface water discharger unless the Secretary determines that:

5.6.3.3.2.1 Such discharger offsets the increased surface water discharge of pollutants of concern within the stream basin to the maximum extent practicable in an acceptable manner;

5.6.3.3.2.2 The increased loadings of pollutants of concern are necessary to prevent a substantial adverse economic or social impact at the community or regional level, and

5.6.3.2.2.3 Water quality will be maintained to fully protect existing uses.

5.6.3.4 Pollution Control Strategy

5.6.3.4.1 For each stream basin designated as ERES waters pursuant to Section 10 of these

standards, the Department shall develop a pollution control strategy. The strategy shall provide for the implementation of best management practices established pursuant to Subsection 5.6.3.6 of this section and shall include such additional requirements, measures, and practices as are necessary to:

5.6.3.4.1.1 Prevent the violation of water quality standards;

5.6.3.4.1.2 Protect all resources in the stream basin in a manner that allows for natural conditions to be maintained or restored; and

5.6.3.4.1.3 Assure the protection and propagation of a balanced, indigenous population of fish, shellfish, aquatic vegetation, and wildlife, and provide for recreational activities in and on the water.

5.6.3.4.2 The strategy pursuant to this subsection shall, at a minimum:

5.6.3.4.2.1 Provide an assessment of the nature, degree, and extent of pollution to waters within such stream basin, in terms of point source and non-point source contribution;

5.6.3.4.2.2 Identify the aspects of the stream basin which are important, unique, or sensitive from a recreational or ecological perspective;

5.6.3.4.2.3 Establish \_\_\_\_\_ such additional indicators and criteria that satisfy the general policy and provisions established for such stream basins;

5.6.3.4.2.4 Identify the means by which ERES standards will be achieved;

5.6.3.4.2.5 Delineate, \_\_\_\_\_ where appropriate, the specific point source effluent limits, best management practices, and other controls that will be used to achieve water quality standards; and

5.6.3.4.2.6 Indicate changes to be made to state plans for control of water pollution or resource management to assure implementation of the strategy.

5.6.3.4.3 The Department shall assure the opportunity for public participation in the development of the strategy required pursuant to this subsection and shall provide for public review and comment on the strategy in accordance with 7 Del. Code 6010.

5.6.3.4.4 The Department may, to the extent it deems appropriate, provide technical assistance to local governments in developing and implementing the strategy required pursuant to this subsection.

5.6.3.4.5 The Department shall, to the extent it deems appropriate, pursue and coordinate implementation of any strategy developed pursuant to this subsection through priority application of its resources to ERES waters through its regulatory and non-regulatory programs.

5.6.3.4.6 The Department may, in accordance with 7 Del. Code 6010, adopt and require the use of specific combinations of methods, practices, and

technologies which it deems to be most effective for controlling, reducing, or removing waste loadings to ERES waters. Such requirements shall be based upon the application of good engineering and environmental science practices and principles, achieve a high degree of reliability, and be appropriate for the categories of activity.

#### 5.6.3.5 Best Management Practices

The Department may adopt, pursuant to 7 Del.C. 6010, best management practices for selected sources of pollution to ERES waters. Best management practices identified by the Department pursuant to this subsection shall provide a standard for the control of the addition of pollutants which reflects the greatest degree of pollutant reduction achievable including, where practicable, a standard requiring no discharge of pollutants.

### Section 6: Regulatory Mixing Zones

The following requirements shall apply to regulatory mixing zones:

6.1 Applicability: In instances where the Department determines, based upon engineering calculations or field studies, that complete mix (as defined herein) of effluent with its receiving water is not expected to occur, the Department may allocate a designated portion of the receiving water to provide for mixing of the effluent and the receiving water. This area shall be defined as a regulatory mixing zone and shall be determined on a case-by-case basis taking into account critical flows, outfall configuration and receiving stream characteristics. A mixing zone will not be allocated in instances where the Department determines that complete mix of effluent and receiving water occurs at the point of discharge, in which case, the critical flows as provided in Section 7 shall be applied in determining if the applicable criteria are met.

6.2 Location: Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas, or heavily utilized primary contact recreation areas. Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms. Shore-hugging plumes should be avoided to the maximum extent practicable. In areas where multiple discharges are located in proximity, overlapping discharge plumes may occur. In such instances, the size limitations derived under Section 6.4 may be reduced to preclude acute toxicity in the overlap areas, or to ensure an adequate zone of passage for fish.

6.3 Outfall Design: Outfalls shall be designed to provide maximum protection for humans, aquatic life, and wildlife. Surface discharges to shallow near-shore areas shall be discouraged in preference to submerged outfalls located in deep offshore areas or other alternative discharge configurations which achieve Water Quality Standards.

6.4 Size: Size of the zone shall be no larger than is

necessary to provide for mixing of effluent and receiving water. The following are the maximum size limitations that shall apply unless the discharger can demonstrate to the satisfaction of the Department that a larger mixing zone would not have an adverse impact in the receiving water:

6.4.1 Mixing zones for non-thermal pollutants shall be designed as follows:

6.4.1.1 Rivers: During critical stream flow, as detailed in Section 8 of these standards, the maximum distance to the edge of the mixing zone shall be described by:

$$x_m \leq (u \bullet W^2) / (6H\sqrt{gHS})$$

where $x_m$	≡	maximum mixing zone length,
$u$	≡	flow velocity for critical flow as detailed in Section 7.2.3 or Section 7.3,
$W$	≡	width of river,
$H$	≡	depth of river,
$g$	≡	acceleration due to gravity, and
$S$	≡	slope of river surface.

6.4.1.2 Lakes: Because of the shallow depth and small size of Delaware lakes, regulatory mixing zones shall be prohibited in these waters.

6.4.1.3 Tidal waters: For mean low water slack tide conditions, the maximum horizontal distance from the edge of the outfall structure to the edge of the mixing zone shall be no greater than twenty-five percent (25%) of the width of the tidal water at the point of discharge.

6.4.2 Mixing zones for thermal (temperature) pollutants shall be defined as those waters between the point of discharge and the point at which the receiving water temperature criteria are met as defined in Section 11, subject to criteria 6.4.2.1 through 6.4.2.5 below. For non-tidal freshwater, mixing zones shall be designed using the critical stream flow specified in Section 7.1 or 7.3.

6.4.2.1 The greatest offshore extension of the mixing zone shall not exceed 50 percent of the width of the waterbody at the point of discharge.

6.4.2.2 Thermal mixing zone cross-sectional area as measured in a vertical plane perpendicular to the receiving water flow shall not occupy more than 25 percent (25%) of the cross-sectional area of the receiving water as measured from the point of discharge to the opposite shore.

6.4.2.3 In areas where multiple discharges are located in proximity, overlapping discharges may occur. In such instances, the above size limitations shall apply to the cumulative influence of the multiple discharges.

6.4.2.4 Because of the shallow depth and small size of Delaware lakes, thermal mixing zones shall be prohibited in those waters.

6.4.2.5 As an alternative to 6.4.2.1 through

6.4.2.4 above, the size of the thermal mixing zone may be determined on a site-specific basis. This determination must be based upon a sound rationale and be supported by substantial biological, chemical, physical, and engineering evidence and analysis. Any such determination must show to the Department's satisfaction that no adverse changes in the protection and propagation of balanced indigenous populations of fish, aquatic life, and wildlife, may reasonably be expected to occur. A satisfactory showing made in conformance with Section 316(a) of the Water Quality Act of 1987 shall be deemed as compliance with the requirements of this paragraph.

**6.5 In-Zone and Boundary of Zone Water Quality Requirements:**

**6.5.1** Regulatory mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by the Clean Water Act or other applicable State and Federal laws or regulations.

**6.5.2** Regulatory mixing zones shall be free of the following:

**6.5.2.1** Materials which result in the accumulation of toxic substances in sediment, aquatic life, or food chains at levels that may be harmful to the health of humans or aquatic life;

**6.5.2.2** Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

**6.5.2.3** Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

**6.5.2.4** Substances in concentrations that produce color, odor, taste, or turbidity that may lead to significant disruption of public water supply treatment systems, or may cause a nuisance condition; or

**6.5.2.5** Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

**6.5.3** No acute aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded at any point greater than one-tenth of the distance from the edge of the outfall structure to the boundary of the regulatory mixing zone as defined above. Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

**6.5.4** No acute aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded at any point greater than fifty (50) times the discharge length scale in any horizontal direction from the edge of the outfall structure.

**6.5.5** No acute aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded at any point greater than five (5) times the average water depth in the regulatory mixing zone in any horizontal direction from

the edge of the outfall structure.

**6.5.6** No chronic aquatic life criterion, as detailed in Section 4.5.9 of this document, may be exceeded beyond the boundary of the regulatory mixing zone as defined above.

### **Section 7: Critical Flows**

**7.1** For all waters of the State, all water quality standards and criteria, except those for toxic substances, shall not apply at those times when the freshwater flow or net advective flow falls below that value that is equal to the flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10). However, at all times all waters shall be free of materials and substances as listed in Section 6.5.2.

**7.2** For all waters of the state, water quality criteria for toxic substances as specified in Section 4.5.9 shall not apply at those times when the freshwater or net advective flow falls below the following values:

**7.2.1** The harmonic mean flow, for human carcinogens;

**7.2.2** The flow of 30-day duration with recurrence interval of 5 years (generally known as the 30Q5 or Q30-5), for human systemic toxicants and for ammonia fresh water aquatic life chronic toxicity criteria;

**7.2.3** The flow of 7-day duration with recurrence interval of 10 years (generally known as the 7Q10 or the Q7-10), for compounds having a chronic toxicity criterion; and

**7.2.4** The flow of 1-day duration with recurrence interval of 10 years (generally known as the 1Q10 or the Q1-10), for compounds having an acute toxicity criterion.

**7.3** These critical flows shall also be used as design flows for developing water quality-based discharge limitations for the referenced groups of parameters. The Department shall consider scientifically reasonable requests for seasonally adjusted flows or the use of dynamic modeling techniques for this purpose on a case-by-case basis.

**7.4** Nothing in Section 7 shall be construed as allowing any reduction in efficiency of, or suspension of, required pollution control practices, whether applied to point or nonpoint sources, during periods when flows are less than those specified for suspension of standards applicability in Sections 7.1-7.3.

### **Section 8: Criteria for Low Flow Waters**

**8.1** A low flow water is one in which the 7Q10 freshwater inflow is less than 0.1 cfs. The following criteria shall apply to discharges into low flow waters:

**8.1.1** Where information is available for the receiving water which indicates that, because of low flow, it would not support designated uses, then numeric criteria

shall not apply. The numeric criteria shall then apply at the closest downstream point where uses could reasonably be expected to occur.

8.1.2 The discharge shall not add:

8.1.2.1 Materials which result in the accumulation of toxic substances in sediment, aquatic life or food chains at levels that may be harmful to the health of humans or aquatic life;

8.1.2.2 Materials in concentrations that may settle to form deposits which smother benthic organisms, may exert significant dissolved oxygen demand, or may create a nuisance condition;

8.1.2.3 Floating debris, oil, scum, foam, and other matter in concentrations that may cause a nuisance condition;

8.1.2.4 Substances in concentrations that produce color, odor, taste or turbidity that may lead to significant disruption of a public water supply treatment systems, or may cause a nuisance condition; or

8.1.2.5 Substances in concentrations that may result in a dominance of nuisance species, or may affect species diversity.

8.2 The applicant for discharge shall bear the burden of showing, to the satisfaction of the Department, that the provisions of 8.1.1 and 8.1.2 above are met.

8.3 Any application for new or increased discharge to a low flow water must include a thorough evaluation of alternate discharge configurations, including but not limited to water conservation, relocating the outfall to a more suitable location, conveying the wastewater to other available treatment facilities, or utilizing land treatment. Alternatives which do not include discharge must be used wherever technologically feasible and cost-effective (notwithstanding other requirements of these or other applicable regulations).

### **Section 9: Exceptions, Modifications and Conditions**

#### **9.1 Exceptions and Modifications**

##### **9.1.1 Request for Removal of Designated Uses:**

The Department shall consider scientifically reasonable requests for the removal of a designated use which is not an existing use, or the establishment of sub-categories of a use for a water body or segment of specific waters of the State based upon the demonstration by means of a Use Attainability Analysis that attainment of the designated use is not feasible because:

9.1.1.1 Naturally occurring pollutant concentrations prevent the attainment of the use; or;

9.1.1.2 Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

9.1.1.3 Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

9.1.1.4 Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or

9.1.1.5 Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

9.1.1.6 Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.

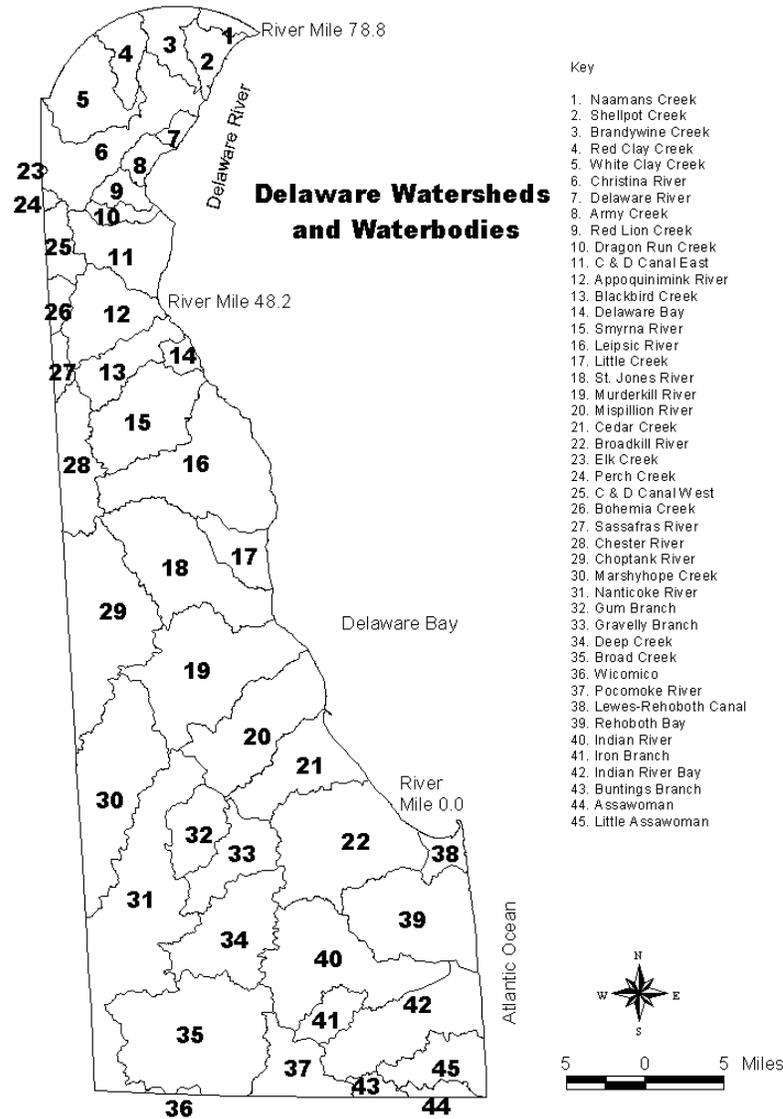
A request for removal of designated uses shall be deemed a scientifically reasonable request if it is demonstrated that the Use Attainability Analysis prepared and submitted by the requestor is based upon sound scientific rationale and is supported by substantial scientific and technical evidence and analysis as to the existence of one or more of the factors listed above. If the Department finds any request for removal to be frivolous or to be flawed as to the methods used to obtain evidence or perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical or scientific methods employed, it may dismiss such request for removal without further action. If the Department determines that a scientifically reasonable request has been made, it shall make a preliminary determination as to the proposed change and hold a public hearing in accordance with 7 Del. Code Section 6006. The removal or establishment of sub-categories of a designated use completed under this Section are deemed to be duly adopted components of the State of Delaware Surface Water Quality Standards.

The Department will not consider requests for the removal of a designated use, for a water body or segment of specific waters of the State if:

9.1.1.7 They are existing uses unless a use requiring more stringent criteria is added; or

9.1.1.8 The designated use will be attained by implementing effluent limits required under sections 301(b) and 306 of the Clean Water Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

9.1.2 Request for Modification of Water Quality Criteria: The Department shall consider scientifically reasonable requests for modification of water quality criteria contained herein for portions of specific waters of the State. A request for modification shall be deemed to be a



scientifically reasonable request if it is based upon a sound rationale, and supported by substantial scientific evidence and analysis. This evidence and analysis must demonstrate the existence of site-specific differences in the chemical, physical, or biological characteristics of the surface water, and must propose alternate site-specific water quality criteria. Scientific studies for the development of these alternate criteria shall be designed and conducted in accordance with the guidelines set forth in the Water Quality Standards Handbook Second Edition, EPA 823/B-94-005 or other scientifically defensible methodologies approved by the Department. If the Department finds any request for modification to be frivolous, to be flawed as to the methods used to obtain evidence and to perform analysis to such an extent that the validity of the conclusions would be challenged by most persons trained and competent in the use and interpretation of the technical and scientific methods

employed, or to contain reasonable evidence that a reduction in the number, quality, or river or stream mileage of designated uses would occur, it may dismiss such request for modification without further action. If the Department determines that a scientifically reasonable request has been made, the Department shall make a preliminary determination as to the proposed change and shall hold a public hearing in accordance with 7 Del. Code Section 6006. If the Department determines that a scientifically reasonable request has been made pursuant to this Section and such request could result in a change in discharge limits, then the public hearings for the discharge limitation change and the criteria modification shall be held concurrently. In such case, the Department shall provide separate public notices for the discharge limitation change and the criteria modification. Criteria modification completed under this Section are deemed to be duly adopted components of the

State of Delaware Surface Water Quality Standards.

~~9.1.3 Variance for Pollutants Corroded and Eroded from Water Distribution Piping and Appurtenances: For the purpose of establishing discharge limitations, a facility may be granted a variance from water quality criteria for pollutants contributed by normal corrosion and erosion associated with the facility's piping and appurtenances in situations where this corrosion and erosion causes or would be expected to cause exceedances in the receiving water, provided that the discharger demonstrates, based upon sound rationale and supported by substantial scientific and technical evidence and analysis, all of the following:~~

~~9.1.3.1 In the absence of pollutants corroded and eroded from the facility's water distribution piping and appurtenances, there would be no violation of the surface water quality criteria in the receiving water; and~~

~~9.1.3.2 The normal corrosion and erosion associated with the intake water used by the facility is sufficient to be the sole cause of the violation. For purposes of this determination, intake water characteristics shall be used in assessing normal corrosion and erosion; and~~

~~9.1.3.3 No other activity, condition or method of operation, or materials used or produced at the facility, which results in the addition to erosion and corrosion based pollutants into the facility's discharge, significantly contributes to the violations of surface water quality criteria in the receiving waters. Such activities, conditions or methods of operation, or materials used or produced at the facility include entrainment of pollutants previously discharged or disposed by the facility; and~~

~~9.1.3.4 No practicable alternative water supply or treatment methodology or system which would yield statistically significant lower corrosivity or erosiveness is available to the facility; and~~

~~9.1.3.5 The discharger demonstrates that controls more stringent than technology-based limits and Section 306 of the Clean Water Act that would result in substantial and widespread economic and social impact. The analysis of economic impacts must demonstrate that:~~

~~9.1.3.5.1 The discharger would face substantial financial impacts due to the costs of the necessary pollution controls or water treatment (substantial impacts of which would interfere with development), and~~

~~9.1.3.5.2 The affected community will bear significant adverse impacts if the entity is required to meet existing or proposed water quality standards (widespread impacts of important development).~~

~~9.1.3.6 The discharger will be required to meet applicable criteria for all other constituents. An~~

~~alternative criteria will be derived for the erosion/corrosion-based pollutants based on intake water characteristics and properties of the facility's piping and appurtenances. A variance granted under this Section shall be effective for three years, or the life of the NPDES permit, and at the expiration of either time period, the discharger must either meet the criteria or make a new demonstration of unattainability and financial impact. Variances considered under this Section shall be subject to all applicable public participation requirements and shall be subject to review and approval by the U.S. Environmental Protection Agency.]~~

#### 9.2 Conditions

9.2.1 Any person who shall apply for a permit to discharge to the waters of the State shall have the opportunity to submit an analysis to the Department at the time of application to demonstrate that said discharge will not cause, have the reasonable potential to cause, or contribute to an excursion of the receiving stream's water quality standards. The Department shall consider any analysis submitted by the applicant and also conduct its own analysis in making a determination whether the discharge causes, has the reasonable potential to cause, or contributes to an excursion of standards. Analyses performed under Section 9.2.1 shall be conducted in concert with the requirements of Section 3, as applicable. A public hearing, pursuant to 7 Del. Code, Sections 6004 and 6006, may be held to gather public comment on any analysis submitted by an applicant in conjunction with Section 9.2.1.

9.2.2 Consistency with Other State and Federal Requirements: Nothing in Section 9 relieves or reduces the obligation of any person to comply with other applicable provisions of these Standards, federal or state laws and regulations.

#### Section 10: Separability

Should any section, paragraph, or other part of this document be declared invalid for any reason, the remainder shall not be affected.

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## DEPARTMENT OF STATE DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code,  
Section 1815(b), (30 Del.C. §1815(b))

### ORDER

Nature of Proceedings

In accordance with 29 Del.C. §10115 and 30 Del.C.

§1815 (b), the Department of State, Division of Historical and Cultural Affairs (DHCA) published notice of proposed changes to the Historic Preservation Tax Credit Program in the **Delaware Register of Regulations** ("Register") May 1, 2004 [(7 DE Reg. 1501-1504 (05/01/04)]. The notice provided a full text of the existing Regulations with proposed changes, and provided notice of date and location for receiving written public comment. In addition to the notice published in the Register, the Department published notice of the opportunity for public comment concerning the proposed regulations in two newspapers of general circulation throughout the state. The public comment period was from May 1, 2004 through June 1, 2004. The purpose of the proposed changes to the regulations is to implement code revisions of 2003 relating to a resident curator program.

### **Summary of Evidence**

The Department received no written comments in response to the notice of intention to adopt the proposed regulations.

### **Findings of Fact**

The public was given the required notice of the Department's intention to adopt the proposed regulations and was given ample opportunity to provide the Department with comments opposing the Department's proposals. Thus, the Department concludes that its consideration of the proposed regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

### **Order and Effective Date**

NOW THEREFORE, it is ordered that the proposed regulations, as set forth in the attached copy, are adopted and shall be final effective July 11, 2004.

Harriet N. Smith Windsor  
Secretary of State

### **Regulations Governing the Historic Preservation Tax Credit Act**

#### **1.0 Scope**

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. Any person eligible for credits under this Chapter may transfer, sell or assign any or all unused credits, except a person

engaged in a resident curator relationship.

#### **6 DE Reg. 108 (7/1/02)**

#### **2.0 Statutory Authority**

These regulations are created pursuant to Chapter 18, Subchapter II of Title 30 Delaware Code (as amended) which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

#### **6 DE Reg. 108 (7/1/02)**

#### **3.0 Definitions**

3.1 "**Act**" means Chapter 18, Subchapter II of Title 30 Delaware Code, as amended.

3.2 "**Application**" means the Delaware Historic Preservation Tax Credit application that shall consist of three parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); and the Request for Certification of Completion (Part 3).

3.3 "**Certified historic property**" or "**qualified property**" shall mean a property located within the State of Delaware that is:

3.3.1 individually listed in the National Register of Historic Places; or

3.3.2 located in a historic district listed in the National Register of Historic Places, and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or

3.3.3 individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or

3.3.4 located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

3.4 "**Certification of Completion**", "**Completion Certificate**" or "**Certificate**" shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

3.5 **"Certified rehabilitation"** shall mean that rehabilitation of a certified historic structure that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CRF, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

3.6 **"Credit award"** shall mean the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate amount as determined in Section 1813 of Chapter 18, Subchapter II of Title 30 Delaware Code, (as amended).

3.7 **"Delaware State Historic Preservation Officer"** shall mean the person designated and appointed in accordance with 16 USC Sec. 470a(b)(1)(a), as amended.

3.8 **"Federal tax credit"** shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

3.9 **"Fiscal Year"** shall mean the State's fiscal year.

3.10 **"National Register of Historic Places"** or **"National Register"** shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

3.11 **"Office"** or **"State Office"** shall mean the Delaware State Historic Preservation Office.

3.12 **"Owner-occupied historic property"** shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. "Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause. Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

3.13 **"Person"** shall include any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships), whether or not for profit; any trust or estate, and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity, or person under a lease contract for five

years or longer.

3.14 **"Property"** shall mean real estate, and shall include any building or structure, including multiple-unit structures.

3.15 **"Qualified expenditure"** shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

3.15.1 acquisition of real property, or acquiring an interest in real property;

3.15.2 any addition to an existing structure, except where the combined square footage of all additions is twenty percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

3.15.2.1 preserving the character-defining features of the certified historic property,

3.15.2.2 adequately differentiating the new construction from the existing structure, and

3.15.2.3 complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

3.15.3 paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures;

3.15.4 sales and marketing costs; or

3.15.5 expenditures not properly charged to a capital account, including, in the case of owner occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

3.16 "Resident Curator" shall mean a person who has entered into a contractual agreement with the owner of a qualified property in which the person agrees to pay for full restoration of the owner's qualifying property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

3.16 7 **"Substantial rehabilitation"** or **"full restoration"** shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the twenty-four month period selected by the taxpayer and ending with or within the taxable year, exceed:

3.16 7.1 for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(1)(C) of the Internal Revenue Code; and

3.16 7.2 for owner-occupied historic property or property under contract with a resident curator, five thousand dollars (\$5,000).

3.17 8 **"Taxpayer"** shall include any 'person' as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of Title 30

**6 DE Reg. 108 (7/1/02)****4.0 Procedures for Certification of Historic Property**

4.1 A taxpayer may request that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as a certified historic property by filing the Part 1 application with the State Office. The Part 1 application shall be filed on standard forms available from the State Office. An incomplete application will not be processed until all required application information has been received. The State Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.2 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and shall notify the taxpayer of the decision.

4.3 Taxpayers of properties individually listed in the National Register do not need to submit a Part 1 application. The name of the historic property and its date of listing in the National Register must be provided in the Part 2 application.

**6 DE Reg. 108 (7/1/02)****5.0 Procedures for Certification of Rehabilitation**

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed substantial rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office. The Part 2 application shall be filed on standard forms available from the State Office.

5.2 A taxpayer must submit Part 1 of the application prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented and approved Part 1 application, where required as outlined in Section 4.0 of these regulations, is on file.

5.3 An incomplete application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.4 The Delaware State Historic Preservation Officer shall determine whether the proposed substantial rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the taxpayer notice of the determination and of the credit award. The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.

5.5 The Part 2 application must provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator for the proposed rehabilitation. This information will be used to determine the credit award for approved Part

2 applications.

5.6 The amount of tax credit applied against the qualified expenditures in accordance with Section 1813 of Title 30 Delaware Code (as amended) shall represent the "credit award."

5.7 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office.

5.8 In the alternative, the Delaware State Historic Preservation Officer may certify a rehabilitation plan and issue a Part 2 approval to any taxpayer who has obtained a Part 1 and Part 2 certification from the federal government pursuant to 36 CFR 67, where applicable. Under this provision, taxpayers must file the State of Delaware Part 2 cover form containing the information required under section 5.5 of these regulations.

5.9 All taxpayers must begin construction on the approved Part 2 plan within one year of receiving the Part 2 approval. Taxpayers, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work. If construction on the rehabilitation plan is not substantially commenced and is being diligently pursued within this time period, the taxpayer will forfeit the awarded credits, and the credits awarded to such taxpayer will become available for award to other taxpayers. Substantially commenced and diligently pursued means that at a minimum twenty-five percent (25%) of the estimated rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

5.10 The project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work is consistent with the approved Part 2 plan or the project has substantially commenced and is being diligently pursued.

**6 DE Reg. 108 (7/1/02)****6.0 Procedures for Certification of Completion**

6.1 Upon completion of a certified rehabilitation, the taxpayer must submit a Part 3 application, with required documentation, to the Delaware State Historic Preservation Office. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2 Upon approval by the State Office that the completed rehabilitation meets the definition of a certified rehabilitation, the State Office shall submit the documentation to the Division of Revenue or the State Bank Commissioner, as appropriate, and request a determination of the value of the tax credit.

6.3 Upon receipt of the certification of the value of the tax credit associated with the Certificate of Completion by the Division of Revenue or the State Bank Commissioner,

the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer.

6.4 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

**6 DE Reg. 108 (7/1/02)**

### **7.0 Fees for Processing Rehabilitation Certification Request**

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. The fee from a single taxpayer for multiple projects submitted at the same time shall not exceed \$2,500. Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under \$100,000.

7.2 The fee, where applicable, must be submitted with the Part 3 application. All checks shall be made payable to the State of Delaware.

**6 DE Reg. 108 (7/1/02)**

### **8.0 Resident Curator Program**

8.1 Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.

8.2 Improvements to curatorship property must be completed within five years from the date of execution of the contract between the owner and the resident curator.

8.3 Curatorship property may not be used for commercial purposes.

### **89.0 Administrative Review**

89.1 A taxpayer whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

89.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

89.3 A taxpayer whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 Del.C. §10101 et. seq.

89.4 An appellant who has exhausted all

administrative remedies shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

**6 DE Reg. 108 (7/1/02)**

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER FIFTY-SIX**

**RE: Establishing The Infant Mortality Task Force**

**WHEREAS**, the State of Delaware has undertaken a number of important and substantial initiatives to improve the health of pregnant women and their babies, including, but not limited to: substantially increasing Medicaid coverage for pregnant women and infants; initiating the Home Visiting program for first-time mothers and other programs such as Smart Start, Genetic Services, the Child Development Watch program, and expanding the Women, Infants and Children ("WIC") program; establishing the Ecumenical Council on Maternal and Infant Health; and forming the Child Death and Stillbirth Review Commission; and

**WHEREAS**, since its formation in 1995, the Delaware Perinatal Board has coordinated initiatives to address infant mortality in the State; and

**WHEREAS**, despite the State's aggressive efforts, and notwithstanding the fact that Delaware ranks well in the percentage of expectant mothers receiving prenatal care, Delaware's infant mortality rate has remained persistently high; and

**WHEREAS**, although the Delaware Perinatal Board has diligently and commendably fulfilled its purposes, the State's continuing struggle with infant mortality issues demonstrates the need for a single purpose task force to comprehensively assess the current status of the infant mortality problem in the State, and to develop strategies for improving Delaware's infant mortality initiatives and raise awareness concerning continued infant mortality problems in the State,

**NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:**

1. The Delaware Infant Mortality Task Force is established. It shall consist of members, appointed by the Governor, who shall be broadly representative of the population of the State and of organizations in the state that address or are impacted by the issue of infant mortality, including the Perinatal Board. Two-Co-Chairpersons, one a representative of the Division of Public Health, and one from the private or non-profit sector, shall be appointed by the Governor. The members of the Infant Mortality Task Force shall serve at the pleasure of the Governor, and the terms of all members shall terminate at the time the Task Force

tenders its Recommendations for Reduction of Infant Mortality Rates in Delaware to the Governor.

2. The Infant Mortality Task Force shall advise the Governor through the Division of Public Health and the Department of Health and Social Services of strategies to reduce infant mortality in Delaware. The Task Force shall develop broad-based recommendations for the reduction of infant mortality in Delaware, which are based upon scientific evidence, defined partnerships, expected contributions, time lines, review and evaluation. These recommendations should encompass but not be limited to charges to business, community, education, communities of faith, providers, hospitals, insurers and government.

3. The Task Force shall issue its progress report, Recommendations for Reduction of Infant Mortality Rates in Delaware, within six months of the date of this Order. Its final report shall be submitted within nine months of the date of this order.

4. The goals of the Infant Mortality Task Force shall include, but shall not be limited to:

a. Defining the infant mortality status of Delaware as compared to the nation and the region.

b. Defining the disparities among races related to infant mortality and determining the reasons for the increasing disparity gaps.

c. Identifying risk factors and underlying etiologies when possible.

d. Reviewing scientific literature for the purpose of determining risk factors for infant mortality and best practices for prevention and intervention.

e. Determining and assessing the impact of relevant risk factors.

f. Increasing awareness of the scope of the problem among government officials, medical professionals and the public.

g. Improving coordination between and among public and private sector agencies.

h. Recommending critical changes to the profile of, operations of, and support of the Perinatal Board.

i. Identifying areas requiring additional research and education.

5. The Infant Mortality Task Force shall establish subcommittees under the leadership of Task Force members to conduct the activities of the Task Force. Each Task Force member is expected to be involved in the Task Force's activities and to serve on one subcommittee.

6. The Division of Public Health shall utilize the final recommendations to develop a comprehensive multidisciplinary Infant Mortality reduction plan for the State of Delaware.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

**GENERAL NOTICE**

**Temporary Assistance to Needy Families (TANF)  
Caseload Reduction Credit Report**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the TANF Caseload Reduction Credit Report for fiscal year 2004. The Department's proceedings 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 public comment pursuant to 29 Delaware Code Section 10115 in the May 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROVISIONS**

**Temporary Assistance to Needy Families (TANF)  
Caseload Reduction Credit Report**

Section 407(b)(3) of the Social Security Act (the ACT) requires a reduction of the State's required participation rate for a fiscal year by the number of percentage points that the average monthly number of families receiving assistance in the State in the immediately preceding fiscal year is less than the average monthly number of families that received assistance in the State in fiscal year (FY) 1995.

The statute prohibits this reduction from including any caseload declines due to requirements of Federal law or due to differences in State eligibility criteria. This reduction in the participation rate is termed the *TANF Caseload Reduction Credit*.

To receive a caseload reduction credit, a State must complete Form ACF-202, the Caseload Reduction Report, in accordance with the regulations at 45 CFR 261.40 et seq. The FY 2004 report provides the information needed to calculate a caseload reduction credit (FY 2004 vs. FY 1995), and thus determine the participation standard the State must meet for the fiscal year. Form ACF-202 and Attachment 1 to Form ACF-202 are available upon request via mail or fax.

ACF-202 TANF Caseload Reduction Credit Report

**ACF-202 TANF Caseload Reduction Credit Report**

- Part I - Implementation of All Eligibility Changes Made by the State Since FY 1995
- Part II - Application Denials and Case Closures, By Reason
- Part III - Description of the Methodology Used to Calculate the Caseload Reduction Estimates (Attachment 1 to Form ACF-202)
- Part IV- Certification

**SUMMARY OF INFORMATION SUBMITTED WITH  
AGENCY RESPONSE**

No comments were received during the public comment period.

**FINDINGS OF FACT**

The Department finds that the Delaware TANF Caseload Reduction Credit Report ("Report") for Fiscal Year 2004, as set forth in the April 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the Report is adopted and shall be final effective July 10, 2004.

Vincent P. Meconi,  
Secretary, Department of Health  
and Social Services  
Date of Signature 6.15.2004

**Delaware TANF Caseload Reduction Credit Report for  
FY 2004**

Attachment 1 to Form ACF-202

**Part III—Description of the Methodology Used to  
Calculate the Caseload Reduction Estimates**

**A. Actual Caseload Reduction and Adjustment for  
Excess MOE Funds**

- Taking into account the pro rata reduction in the FY2003 caseload due to excess MOE spending, Delaware's average monthly TANF caseload declined by 37.3 percent between FY 1995 and FY 2003. This caseload reduction number includes child-only cases, as instructed in ACF guidance.

<b>Delaware AFDC/TANF Caseload for FY 95 and FY 03</b>	
FY 1995 monthly average caseload	10,775
FY 2002 monthly average caseload, actual (= 5,613 TANF + 112 SSP families)	5,735
FY 2003 monthly average caseload, adjusted for excess MOE spending	5,034
Caseload decline, FY1995 to FY 2003 (not including the effect of eligibility changes)	5,741
Sources: FY1995 and FY2003 TANF caseloads from ACF/ OPRE; SSP caseload from DE DSS	

- The following table shows how the pro rata reduction for excess MOE was calculated.
  - Because Delaware served its two-parent caseload under a separate state program in FY 2003, and because the State met its all-family work participation rate requirement in FY 2003, the relevant spending floor is 75 percent of the basic MOE amount.
  - The pro rata reduction takes into account the use of federal TANF funds. The pro rata reduction is calculated as the State excess MOE divided by the average cost per case, where cost is the sum of State and federal TANF funds.
  - The end result is a pro rata reduction of 700 cases. This number is subtracted above from the actual FY 2003 monthly average caseload to yield the adjusted FY2003 caseload of 5,741.

<b>Pro Rata Reduction for Excess MOE</b>			
(a)	DE FY1994 spending	\$29,028,092	
(b)	MOE (75% of (a))	\$21,771,069	
(c)	DE FY2003 MOE spending	\$28,670,088	
(d)	Federal TANF block grant funds spent in FY2003	\$27,814,701	
(e)	Total TANF spending for FY2003	\$56,484,789	= (c) + (d)

(f)	Average spending per case	\$9,850	= (e) / FY2003 caseload = (e) / (5,613 TANF + 122 SSP)
(g)	Excess MOE for FY2003	\$6,899,019	= (c) - (b)
(h)	Cases funded by excess MOE	700	= (g) / (f)

**B. Changes Required by Federal Law**

**1. Parents/caretakers must work after 24 months of assistance or when job-ready**

- The estimated impact of this federal policy on Delaware’s caseload is 0, because the State’s “work for your welfare” requirement effectively supplants the federal policy. The caseload impact of the State policy is described below in Section C.5.

**2. Teen parents must live in adult-supervised settings to receive assistance**

- The estimated impact of this federal policy since FY 1995 is 0, because the policy has been codified in the State manual for many years prior to FY 1995.

**3. A State must deny assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in more than one State**

- For fraudulently misrepresenting residence, Delaware removes the adult’s needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult’s needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware’s automated TANF eligibility system is currently unable to identify such instances, if any exist.

**4. A State must deny assistance for fugitive felons, probation violators, or parole violators**

- For fugitive felons, probation violators, and parole violators, Delaware removes the adult’s needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that

a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

#### 5. A State must deny assistance for certain individuals convicted of drug-related felonies

- For persons convicted of drug-related felonies, Delaware removes the person's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

#### 6. Non-qualified aliens are ineligible for Federal TANF assistance

- The total number of cases denied as non-qualified aliens since the federal policy took effect is 135. This includes denials in FY1998, FY1999, FY2000, FY2001, FY2002 and FY2003.
- The count of denied non-qualified aliens was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been denied as non-qualified aliens. See Section D for a description of this adjustment.

### C. State-Implemented Changes

#### 1. Fill-the-Gap Budgeting for Earnings

- The average monthly number of cases in FY2003 that were subject to fill-the-gap budgeting for earnings is 783. This number is based on a monthly query to the Delaware Client Information System (DCIS) on all open cases with earnings. Cases were counted as subject to fill-the-gap budgeting for earnings in a month only if earnings minus applicable disregards were above the payment standard for the relevant family size.

#### 2. Increased Resource Limit

- The average monthly number of cases open in FY2003 because of the increased resource limits is 281. This number is based on a count of the number of cases open in a month whose assets—cash plus vehicle—were above the previous limits and below the current limit.
- Some cases were subject to both the increased resource limit and fill-the-gap budgeting for earnings. To avoid such double-counting, the number of cases open because of the increased resource limit—281—*excludes* cases that were also open due to fill-the-gap budgeting.

#### 3. Sanctions for Noncompliance with Contract of Mutual Responsibility (CMR) Provisions

- The average monthly number of cases closed in FY2003 because of CMR sanctions is 617. This number is based on monthly cumulative counts of cases closed due to CMR sanctions for FY 1996 through September 2003.
- The CMR sanction is a graduated fiscal sanction. Sanctions for noncompliance are initially \$50 and increase by \$50 every month until there is compliance, or until the sanction amount exceeds the grant amount. Cases are counted as closed due to CMR sanctions only when the sanction amount exceeds the grant amount.
- The CMR count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been closed due to CMR sanctions. See Section D for a description of this adjustment.

#### 4. Sanctions for Noncompliance with Employment and Training Requirements

- The average monthly number of cases closed in FY 2003 because of noncompliance with employment and training (E&T) requirements is 732.
- The sanction for noncompliance with E&T requirements is a 1/3 reduction of the grant amount for the first occurrence, a 2/3 reduction for the second occurrence, and permanent case closure for the third occurrence. Cases are counted as closed due to E&T sanctions only for the third occurrence.
- Because the E&T level 3 sanction is

permanent, the number of cases closed due to E&T sanctions as of the beginning of FY2003 is a cumulative count of all cases closed prior to FY2003. To this number we add the average monthly number of cases closed due to E&T sanctions *during* FY2003.

- The E&T sanction count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been closed due to E&T sanctions. See Section D for a description of this adjustment.

### 5. Work for Your Welfare Requirement

- The average monthly number of cases closed in FY 2003 because of noncompliance with the “Work for Your Welfare” work requirement is 1,265.
- The workfare count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been closed due to noncompliance with the workfare requirement. See Section D for a description of this adjustment.

### 6. Time Limit

- Prior to January 2000, Delaware limited receipt of Temporary Assistance to Needy Families (TANF) –for families in the Time Limited Program–to 48 cumulative months, subject to compliance with Contract of Mutual Responsibility and Work for Your Welfare requirements.
- Effective January 1, 2000 the time limit for receipt of TANF cash benefits is 36 cumulative months. Individuals found eligible for TANF prior to January 1, 2000 will still have a 48 month time limit even if they reapply for benefits after January 1, 2000.
- Thirty one (31) cases reached the four-year time limit during FY 2003. Four (4) cases had reached the newer three-year time limit by the end of FY 2003.

### D. Impacts of Eligibility Changes: Adjusting for Cases that Would Have Left TANF for Other Reasons

- As noted in ACF’s guidance for submitting caseload reduction credit information, “a State

may adjust its estimate of the impact of a change over time to account for likely caseload decline that would have occurred due to other factors, such as earnings, not associated with any eligibility change.” A given cohort of TANF cases will leave TANF over time, even absent sanctions and time limits. Most research shows a monotonic decline over time in the rate of TANF receipt for a given cohort, even when recidivism is accounted for.

- We estimated the rate at which cases would have left over time in the absence of eligibility changes *using TANF receipt rates for the control group from the random assignment evaluation of the State’s ABC program*. The control group is close to an ideal counterfactual because control group members were not subject to the eligibility changes. In addition, the control group receipt rates are measured taking into account recidivism.
- More specifically, we used TANF receipt rates for control group cases that were *ongoing* at the point of random assignment, because cases that are sanctioned off or reach the time limit are ongoing cases at the time they are sanctioned or reach the time limit. Using TANF receipt rates for ongoing control group cases is more conservative than using TANF receipt rates for all control group cases, because exit rates are lower for ongoing cases.
- The TANF receipt rates for ongoing control group cases show that:
  - On average over the first year since random assignment, 5.1 percent of cases left TANF;
  - On average over the two years since random assignment, 7.1 percent of cases left TANF;
  - On average over the three years since random assignment, 15.4 percent of cases left TANF;
  - On average over the four years since random assignment, 43.3 percent of cases left TANF;
  - On average over the five years since random assignment, 63.3 percent of cases left TANF;
  - On average over the six years since random assignment, 79.0 percent of cases left TANF; and
  - On average over the seven years since random assignment, 88.7 percent of cases left TANF.
- These net exit rates were applied to the counts

# GENERAL NOTICES

of cases that closed due to eligibility changes to get the adjusted number of cases closed due to eligibility changes. For example, the average monthly number of cases closed due to CMR sanctions in FY1998 was 489. Using the control group net exit rates, we assume that 63.3 percent of these cases would have left for other reasons by the end of FY2003, so the adjusted number of cases closed due to CMR sanctions in FY 1998 was 179, which is  $489 \times (1 - .633)$ . A similar adjustment was made to cases closed due to sanctions during other years.

- This approach has two limitations. First,

ongoing control group cases became subject to welfare reform policies on average during follow-up quarter 6 or 7. Even so, few or no control group cases would have reached the “work for your welfare” two-year time limit before another eight quarters, meaning follow-up quarters 14 or 15. The second limitation is that, at this point follow-up data are available only through quarter 10. Consequently, net exit rates were extrapolated for quarters 11 through 20, because the adjustment requires exit rates for five full years.

State <u>Delaware</u>		Fiscal Year 2004	
<b>PART I – Implementation of All Eligibility Changes Made by the State Since FY 1995</b>			
#	Eligibility Change	Implementation Date	Estimated Impact on Caseload Since Change (positive or negative impact)
<b>Changes Required by Federal Law</b>			
1	Parents/caretakers must work after 24 months of assistance	March 1997	0
2	Teen parents must live in adult-supervised settings	Prior to FY 1995	0
3	Deny assistance for 10 years for fraudulently misrepresenting residence to obtain assistance in more than one State	March 1997	0
4	Deny assistance for fugitive felons, probation violators, or parole violators	March 1997	0
5	Deny assistance for certain individuals convicted of drug-related felonies	March 1997	0
6	Deny assistance to non-qualified aliens	March 1997	-88
State-Implemented Changes			
<b>Changes Related to Income and Resources</b>			
1	Fill-the-gap budgeting for earnings	October 1995	+783
2	Increased resource limit	October 1995	+281
<b>Changes Related to Categorical or Demographic Eligibility Factors</b>			
	None.		
Changes Related to Behavioral Requirements			
3	Contract of Mutual Responsibility sanctions	October 1995	-617
4	Sanctions for noncompliance with employment and training requirements	October 1995	-732
<b>Changes Due to Full-Family Sanctions</b>			

# GENERAL NOTICES

Other Eligibility Changes			
5	Work for your welfare requirement	October 1995	-1,265
6	Time limit	October 1995	-62
Estimated Total Net Impact on the Caseload of All Eligibility Changes			-1,718
Total Prior Year Caseload			5,735
Estimated Caseload Reduction Credit			37.3 percent (includes adjustment for excess MOE)

State <u>Delaware</u>		Fiscal Year <u>2004</u>		
PART II – Application Denials and Case Closures, By Reason				
Reason for Application Denials	Fiscal Year 1995 <sup>1</sup>		Fiscal Year 2003	
	Number	Percentage	Number	Percentage
Failure to comply with procedural requirements	18	31.6	2,324	26.4
Income exceeds standards	15	26.3	3,702	42.0
Application withdrawn	14	24.6	0	0.0
No eligible child	0	0	1,619	18.4
Resources exceed limits	6	10.5	323	3.7
Not deprived of support or care	1	1.8	0	0.0
Ineligible alien	1	1.8	135	1.5
Other	2	3.5	712	8.1
<sup>1</sup> Delaware's FY 1995 denial and closure numbers are based on the State's quality control sample				
Total Application Denials	57	100.1	8,816	100.0

Reasons for Case Closures	Number	Percentage	Number	Percentage
Failure to comply with procedural requirements	60	46.5	1,393	15.3
Earnings exceed standard of need	29	22.5	1,293	14.2
Voluntary withdrawal/recipient initiative	16	12.4	2,585	28.4
No longer eligible child	10	7.8	3,001	33.0
Moved or cannot locate	8	6.2	764	8.4
No longer deprived of support or care	3	2.3	0	0.0
Support increased from person inside or outside home	0	0	5	0.0
Resources exceed limits	0	0	65	0.7
Other cash income	2	1.6	0	0.0
Failure to comply with JOBS program requirements	0	0	0	0.0

# GENERAL NOTICES

Other	1	0.8	3	0
Total Case Closures	129	100.1	9,108	100.0

State <u>Delaware</u>	Fiscal Year <u>2004</u>
<b>Part III – Description of the Methodology Used to Calculate the Caseload Reduction Estimates</b> (attach supporting data to this form)	
See attachment.	

State Delaware Fiscal Year 2004

### PART IV -- Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995. (A summary of public comments is attached.)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(title)

**DELAWARE STATE FIRE  
PREVENTION COMMISSION****NOTICE OF PUBLIC HEARING**

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.**, 101 on Tuesday, July 20, 2004, at 1:00 P.M. and 7:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations:

2003 Delaware State Fire Prevention Regulations  
PART I, ANNEX A  
PART I, ANNEX B  
PART II, CHAPTER 6  
PART V, CHAPTERS 1 & 5  
PART VI, CHAPTER 3  
APPENDIX E

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. The webpage address is [www.delawarestatefiremarshal.com](http://www.delawarestatefiremarshal.com) under the tabs "Technical Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 10:a.m. on July 19, 2004, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS IN OPTOMETRY****PUBLIC NOTICE**

The Delaware Board of Examiners in Optometry is proposing an amendment to Rule 3.1 of its rules and regulations pursuant to 24 **Del.C.** §2104(a)(1) and 29 **Del.C.** §10115. The Board proposes to amend Rule 3.1. to clarify that an internship is to be done in a private practice setting in the State of Delaware, or other Board approved setting, under the supervision of a licensed optometrist or ophthalmologist to ensure that the clinical setting for the intern is in keeping with the standard of care in Delaware.

The Board will accept written comments from July 1, 2004 through July 31, 2004. The Board will hold a public hearing on the proposed amendment on August 26, 2004 at 6:30 p.m. in the second floor conference room in the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467. Written comments should be submitted to Jane Youmans, Administrative Specialist, Division of Professional Regulation, at the same above-listed address.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, July 15, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF FINANCE  
GAMING CONTROL BOARD****NOTICE OF RESCHEDULED PUBLIC HEARING**

The Delaware Gaming Control Board is proposing to amend its Bingo regulations pursuant to 28 **Del.C.** §1122(a) and 29 **Del.C.** § 10115. The Board proposes to amend Bingo Regulation 2.3 to provide that all bingo applications, original and supplemental, shall be filed at least 6 weeks before the scheduled event. The full text of the proposal is published in 7 **DE Reg.** 775 (12/1/03).

The public hearing originally scheduled for June 3, 2004 at 12:00 p.m. has been continued to August 5, 2004 at 12:00 p.m. at the Division of Professional Regulation, Cannon Building, Suite 203, Second Floor Conference Room, 861 Silver Lake Boulevard, Dover, DE 19904. The written comment period previously noted for May 1, 2004 through

May 30, 2004 is extended until July 31, 2004. Written comments should be submitted to Sherry Clark, Division of Professional Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, DE 19904.

Written comments will be accepted until the conclusion of the public hearing.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

**NOTICE OF PUBLIC HEARING**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted revised proposed Regulations for Assisted Living Facilities regarding requirements for electrical generators. The regulations, revised after public hearings on June 2 and June 3, 2004, will be the subject of a further public hearing on August 5, 2004 as described below. Comments received at the June and August public hearings regarding requirements for electrical generators will be discussed when those regulations are published as final regulations. The remainder of the proposed regulations which were the subject of the June public hearings, pertaining to incident reporting and an exemption for individuals with subcutaneous venous ports from the prohibition against admitting residents with central lines, are published as final regulations in this edition of the Register of Regulations.

**Invitation For Public Comment**

A public hearing will be held as follows:

Thursday, August 5, 2004  
9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments on these proposed regulations should be sent to:

Katie McMillan  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

**DIVISION OF PUBLIC HEALTH  
NOTICE OF PUBLIC HEARING**

The Office of Drinking Water, Division of Public Health, Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems. The public hearing will be held on July 28, 2004 at 2:00 p.m. in the Division of Public Health Training Center, Blue Hen Corporate Center, located on 655 S. Bay Road, Dover, Delaware.

Copies of the proposed revisions are available for review by contacting:

The Office of Drinking Water  
Blue Hen Corporate Center, Suite 203  
655 S. Bay Road  
Dover, Delaware 19901  
Telephone: (302) 739-5410

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by close of business, Monday, July 26, 2004. Anyone wishing to submit written comments as a supplement to, on in lieu of oral testimony should submit such comments by close of business July 30, 2004 to:

David Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, DE 19903-0637

**DEPARTMENT OF INSURANCE**

**NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Tuesday, August 3, 2004, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 606, PROOF OF AUTOMOBILE INSURANCE.

The purpose for amending Regulation 606 is to provide additional consumer protection by updating the requirements

for motor vehicle insurance identification cards and to provide electronically accessible database(s) to establish proof of current automobile insurance to law enforcement officials and motorists at the scene of any accident or violation. Additionally, the amendments seek to update the format required for insurance identification cards that are required to be in each vehicle registered under Delaware law.

The hearing will be conducted in accordance with 19 **Del.C.** § 311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday August 2, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

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**NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday, August 4, 2004, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 607 relating to Defensive Driving Course Discount Automobiles and Motorcycles.

The purpose for amending Regulation 607 is to update the regulation and to provide for online as well as classroom courses and instruction. As a result there will be some definitional changes to the regulation as well as other changes reflective of recent technological developments.

The hearing will be conducted in accordance with 19 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday August 2, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

**NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Tuesday, August 3, 2004, at 9:30 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 1501 relating to MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS.

The purpose for amending Regulation 1501 is to provide protection to a beneficiary covered under a spouse's employer's plan that is primary to Medicare when the primary coverage ends through no fault of the beneficiary. This change will guarantee the ability of an individual to obtain a health policy that will supplement the costs of Medicare. The change will be made by amending 12.2.1 of the regulation (the underlined section constituting the amendment): "12.2.1The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan."

The hearing will be conducted in accordance with 19 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday August 2, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

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**DEPARTMENT OF LABOR****COUNCIL ON APPRENTICESHIP & TRAINING****PUBLIC NOTICE**

The Council on Apprenticeship and Training proposes to recommend to the Secretary of Labor a change to Rule 106.5(D) of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The proposal would change the standard ratio of apprentice to journey person in the plumber/pipefitter trade. The current ratio of 1 to 5 would be a more liberal 1 to 3.

**Comments:**

The proposed rule is published in the Delaware Register of Regulations and two newspapers. Copies are available at the Department of Labor, Division of Employment and Training, 4425 N. Market Street, Wilmington, DE 19802. A copy can be obtained by contacting Kevin Calio, Director of Apprenticeship and Training, at (303) 761-8118. Interested persons can submit written comment to the Council on Apprenticeship and Training c/o Kevin Calio at the above address until the time set for the public hearing.

**Public Hearing:**

A public hearing will be held at 10:00 a.m. on August 3, 2004 at the Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, DE 19802 to receive comment. The Council will consider recommending the change to the Secretary of Labor at a meeting following the public hearing.

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**DEPARTMENT OF STATE  
OFFICE OF THE STATE BANKING  
COMMISSIONER**

**Notice of Proposed Adoption and Amendment of  
Regulations of the State Bank Commissioner**

**Summary**

The State Bank Commissioner proposes to adopt amended Regulation 708 and new Regulations 714 and 1113. Proposed amended Regulation 708 (“Establishment of a Branch Office by a Bank or Trust Company”) is being amended to clarify that it applies only to applications to open traditional branches under § 770(a) of Title 5 and not to mobile branches under § 770(c); that the Commissioner may designate certain portions of such an application as confidential; and that the application will not be deemed filed until it is complete. Proposed new Regulation 714 (“Establishment of a Mobile Branch Office by a Bank or Trust Company”) provides a similar structure for applications to establish mobile branches under § 770(c), establishes a procedure for advanced notification to the Commissioner of proposed changes in the manner or area of operation of a mobile branch, and requires the maintenance an operations log for the mobile branch. Proposed new Regulation 1113 (“Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Ch. 19 of Title 30”) provides for a subsidiary that is not itself a banking organization or trust

company to opt out of the bank franchise tax structure as allowed by § 1101(e) of Title 5 of the Delaware Code and includes forms for that election as well as for an annual report to confirm the subsidiary’s continued eligibility. The State Bank Commissioner would adopt proposed amended Regulation No. 708 and new Regulations 714 and 1113 on or after August 4, 2004. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the Delaware Code.

**Comments**

Copies of the proposed amended and new regulations are published in the Delaware Register of Regulations. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE and are available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended and new regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received before the public hearing scheduled for August 4, 2004.

**Public Hearing**

A public hearing on the proposed regulations will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE on August 4, 2004 commencing at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the Delaware Code.

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**DELAWARE RIVER BASIN  
COMMISSION**

**PUBLIC NOTICE**

The Delaware River Basin Commission will meet on Tuesday, July 13, 2004 at 9:30 a.m. at the Commission’s offices, 25 State Police Drive, West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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