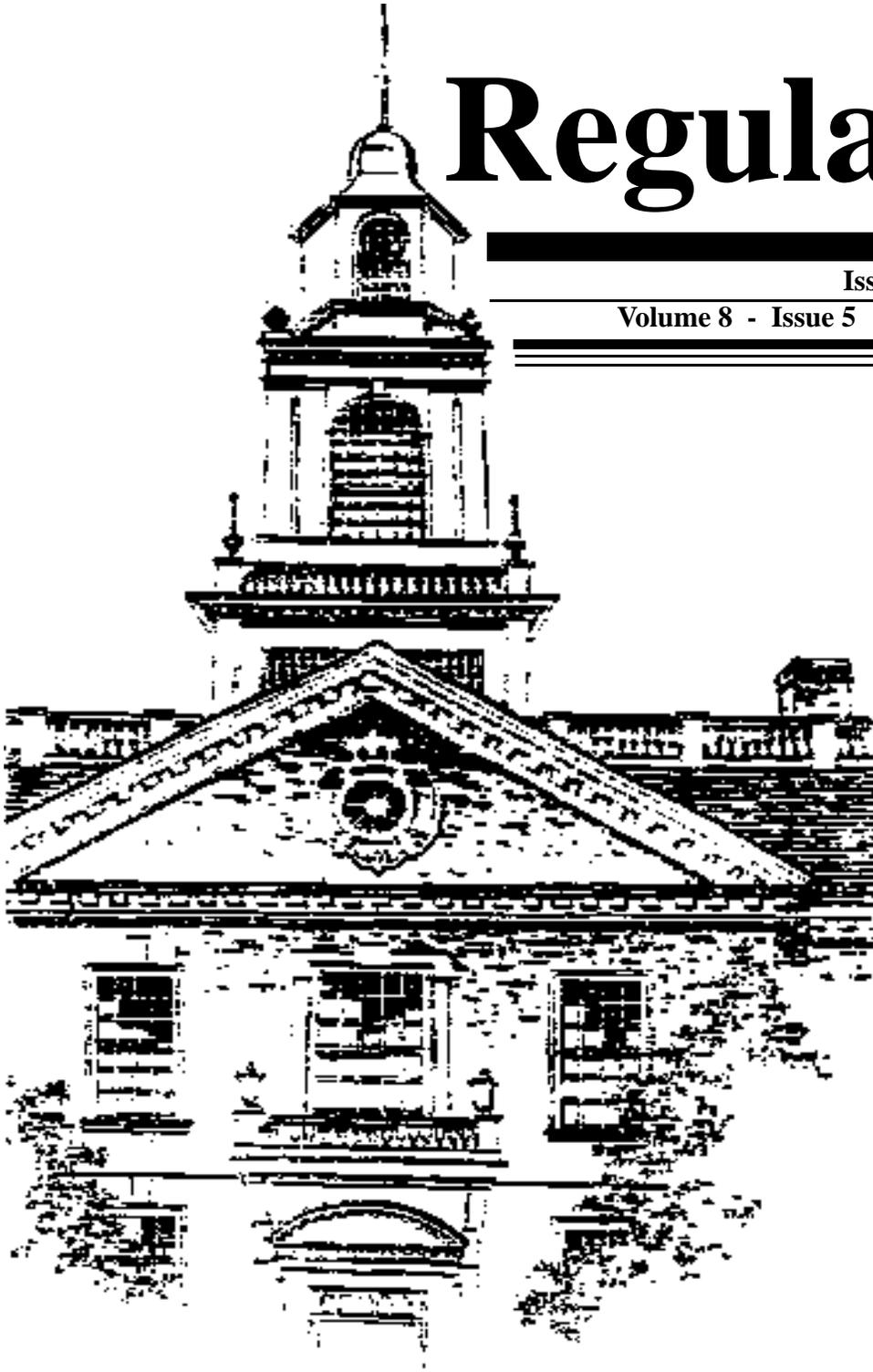

Delaware Register of Regulations



Issue Date: November 1, 2004

Volume 8 - Issue 5

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the *Registrar* for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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| JANUARY 1 | DECEMBER 15 | 4:30 P.M. |
| FEBRUARY 1 | JANUARY 17 | 4:30 P.M. |
| MARCH 1 | FEBRUARY 15 | 4:30 P.M. |
| APRIL 1 | MARCH 15 | 4:30 P.M. |

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

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

ORDER

*** PLEASE NOTE: THIS FINAL REGULATION WAS ORIGINALLY PUBLISHED IN THE OCTOBER 2004 ISSUE OF THE REGISTER. HOWEVER, DUE TO AN ERROR ON THE PART OF THE REGISTRAR'S OFFICE CERTAIN TEXT WAS INADVERTENTLY OMITTED. THE CORRECT VERSION IS PUBLISHED BELOW.**

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Medicaid Waiver Program (ABIMWP). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the August 2004 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 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 Changes

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed set forth the rules and regulations governing the administration of the ABIWP, and describe the types of services available under the program. The regulations being proposed would also define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

The earliest [effective implementation] date for the ABIMWP is October 10, 2004.

**Summary Of Comments Received With Agency
Response
And Explanation Of Change(s)**

The State Council for Persons with Disabilities (SCPD) reviewed the proposed *Acquired Brain Injury Medicaid Waiver Program (ABIMWP)* regulation and offered the following summarized observations and recommendations:

First, DSS recites that the earliest effective date for the waiver is October 10, 2004. This is inconsistent with DSAAPD representations that the waiver was effective in the Spring of 2004. If DSAAPD enrolls anyone in the waiver prior to October 10, 2004, the proposed regulation might provide a basis for CMS denial of federal matching funds.

Agency Response: October 10, 2004 is the proposed date of implementation.

Second, in Section 20700.5.1 3.b., SCPD recommended insertion of "at least" before "one". Otherwise, a participant would literally not qualify for the waiver program if the participant needed more than one waiver service apart from case management.

Agency Response: Inserted "at least" before "one", as recommended.

Third, in Section 20700.5.3, the word "were" should be substituted for "was" in the first sentence for proper grammar (subjunctive mood).

Agency Response: Corrected the typographical error.

Fourth, in Section 20700.5.3, SCPD recommended insertion of the following second sentence: "This determination is made on an aggregate basis which considers all ABIMWP recipients." In response to a Council inquiry, DSAAPD clarified in a November 12, 2003 letter that the waiver is based on an aggregate, not individual, cost cap. The proposed regulation literally requires an individual cost assessment.

Agency Response: Inserted the second sentence, as recommended.

Fifth, Section 20700.5.7 (2nd paragraph), disallows an assisted living facility from providing services to an individual bedridden for seven consecutive days without a physician certification of safety. There is some tension between this provision and waiver provisions specifically authorizing respite care is an assisted living facility for individuals unable to care for themselves. Moreover, it would be logical, given the heading of "hospitalization or

illness”, to include a reference to respite are since a recipient unable to care for himself/herself could transfer to a nursing facility for up to twenty-nine days annually as part of the waiver program.

Agency Response: Revised the second paragraph to include a reference to the Assisted Living Facilities Regulations outlined in section 63.409.

Finally, the regulation states that, without physician certification after seven days, waiver services terminate. This would literally eliminate even case management and personal response system services and is therefore overbroad.

Agency Response: This was not the intent of DSS; therefore, the sentence is deleted.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the August 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is adopted and shall be final effective October 10, 2004.

Vincent P. Meconi, Secretary, DHSS
9/15/04

DSS FINAL ORDER REGULATION #04-20

NEW:

20700.5 Acquired Brain Injury Medicaid Waiver Program

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a home and community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The earliest [effective implementation] date for the ABIMWP is October 10, 2004.

20700.5.1 Eligibility Criteria

To be eligible for the ABIMWP, an individual must:

1. be a Delaware resident
2. be between 18 and 64 years of age (persons who enter the waiver before age 65 may remain in

the waiver after age 65)

3. meet the financial and medical criteria for the DSS Long Term Care Medicaid Program and meet nursing facility admission criteria.

Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD.

Financial eligibility is determined by DSS.

Program eligibility is determined by DSAAPD. An individual must meet all of the following criteria:

a have an injury to the brain which is not hereditary or congenital (Acquired Brain Injury)

b have a need of [at least] one waiver service, in addition to case management, on a monthly basis

c have a physical, cognitive and/or behavioral symptom of an acquired brain injury and currently reside in a nursing facility or is at risk for placement in a nursing facility

d have completed or would no longer benefit from intensive, inpatient, post-trauma or rehabilitation programs

e accept and maintain case management services

20700.5.2 Number of Recipients

There is a maximum number of recipients who may be served under the ABIMWP each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ABIMWP services so the maximum number will not be exceeded.

20700.5.3 Cost Effective Requirement

In order for an applicant to be eligible for the ABIMWP, the applicant's cost of care cannot exceed the cost of their care if the same applicant [was were] institutionalized. [This determination is made on an aggregate basis which considers all ABIMWP recipients.] An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on ABIMWP recipients. A DSAAPD worker determines cost effectiveness.

20700.5.4 Approval

Upon approval, DSS will send a notice of approval to the applicant or the applicant's representative and the ABIMWP provider. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

20700.5.5 Post Eligibility Budgeting

See DSSM 20720 and 20995.1 for patient pay calculation.

For recipients residing in Assisted Living facilities, the personal needs allowance is equal to the current Adult Foster Care rate. Collection of the patient pay

amount from the recipient or the recipient's representative is the responsibility of the assisted living provider.

For recipients residing in community-based settings, the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is providing the most costly service.

20700.5.6 Days Appropriate for Billing

The waiver provider may not bill for any day that the recipient is absent from the program or facility for the entire day. The waiver provider may bill for services for any day that the recipient is present in the facility or program for any part of the day.

If the recipient resides in an assisted living facility, the waiver provider may not bill Medicaid for room and board.

20700.5.7 Hospitalization or Illness

Waiver services will terminate upon hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

~~**If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient that has been bedridden for seven (7) consecutive days unless a physician certifies that the individual's needs may be safely met by the service agreement. If a physician certification is not obtained, waiver services will terminate and DSS will redetermine eligibility for continued Medicaid coverage.**~~

If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient in accordance with the Delaware Regulations for Assisted Living Facilities outlined in section 63.409.]

20700.5.8 ABIMWP Services

Acquired brain injury waiver services will include the following:

Case Management

Personal Care

Respite Care

Adult Day Expanded Services

Specialized Medical Equipment and

Supplies

Personal Emergency Response Systems

(PERS)

Assisted Living Program

Behavioral and/or Cognitive Services

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 HOME RELOCATION
AUTHORITY TRUST FUND**

Statutory Authority: 25 Delaware Code,
Section 7012 (25 **Del.C.** §7012)

NOTICE OF PUBLIC HEARING

The Delaware Manufactured Home Relocation Authority (the "Authority") will hold a public hearing to discuss proposed regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion. The Authority has set an initial \$3.00 monthly assessment for deposit into the Trust Fund, effective April 1, 2004. Under the statute, one-half of the monthly assessment is the obligation of the Tenant of a rented lot and one-half of the assessment is the obligation of the Landlord. The monthly assessments collected by the Authority are deposited into the Trust Fund, and the Authority is responsible for administering this fund. To carry out its statutory responsibilities, the Authority has been directed to, among

other things, establish procedures under which applicants for payment from the Authority may be approved and to set maximum benefits that may be payable to applicants under certain circumstances.

Pursuant to its statutory authority, the Authority is proposing for adoption a comprehensive set of regulations to be used for the administration of the Trust Fund. The proposed regulations published herein will, among other things: (a) establish criteria for tenant benefits, including the maximum relocation payment available to a tenant for a single section home and a multi-section home and the maximum benefits available to a Tenant whose home has been determined to be non-relocatable; (b) criteria for Landlord benefits, including the maximum relocation benefits for manufactured homes that have been abandoned or determined to be non-relocatable; (c) application procedures to be followed by applicants for benefits; and (d) application review procedures.

The public hearing will be on Tuesday, November 30, 2004 beginning at 3:30 p.m. and ending at 6:30 p.m. in the Richardson Conference Room located at the offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

Anyone wishing to present oral comments at this hearing should contact Mr. William A. Denman at (302) 678-3262 by November 22, 2004. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by December 1, 2004 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

201 Delaware Manufactured Home Relocation Trust Fund Regulations

The Authority is granted authority to establish rules and regulations and establish criteria for the disbursement of benefits available to landlords and tenants under the provisions of 25 Del.C. §7011, et. seq. (the "Act"). The regulations set forth below establish criteria for benefits eligibility, pursuant to the statute, application procedures, application review procedures, and payment procedures.

1.0 Criteria for Tenant Benefits

1.1 Only "Tenants", as defined under the Act, are entitled to benefits under the Act. A Tenant is defined to mean an owner of a manufactured home who has tenancy of a lot in a manufactured home community. A manufactured home community refers to a parcel of land where two or more lots are rented or offered for rent for the placement of manufactured homes. Notwithstanding anything stated herein to the contrary, a Tenant shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.

1.2 A Tenant is entitled to relocation benefits under the Act if the Tenant is required to move due to a change in use or conversion of the land in a manufactured home community. A Tenant is not entitled for compensation for relocation if:

1.2.1 the Landlord (at the Landlord's expense) moves the Tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community; or

1.2.2 the Tenant is vacating the manufactured home community and so informed the Landlord before notice of the change in use was given by the Landlord; or (c) the Tenant abandons the manufactured home; or

1.2.3 the Tenant has failed to pay the Tenant's share of the Relocation Trust Fund assessment during the course of his or her tenancy.

1.3 The maximum relocation payment available to a Tenant is \$4,000.00 for a single section home or \$8,000.00

for a multi-section home.

1.4 If a Tenant is required to move due to a change in use and complies with the statutory requirements of 25 Del.C. §7013, the Tenant is entitled to payment from the Relocation Trust Fund of the lesser of:

1.4.1 the actual relocation expenses of moving the manufactured home and existing appurtenances to a new location within a 25 mile radius of the vacated manufactured home community, or

1.4.2 the maximum benefits available under Section 1.3.

1.5 Moving expenses which are eligible for reimbursement include the cost of taking down, moving and setting up the manufactured home in the new location.

1.6 In certain circumstances, a manufactured home may be considered non-relocatable. If, based upon the criteria described herein, a Tenant's manufactured home is determined by the Authority to be non-relocatable, the Tenant may qualify for compensation to reimburse the Tenant for the value of the non-relocatable home subject to the limitations set forth in the Act.

1.7. Whether or not a home can or cannot be relocated will be determined by the Authority based upon the following criteria:

1.7.1 the availability of a replacement home site within a 25 mile radius of the vacated manufactured home community;

1.7.2 the feasibility of physical relocation, including the ability of taking down, moving and setting up the home in a new location without causing significant structural damage to the manufactured home in the process;

1.7.3 the appraised value of the manufactured home in comparison to the projected cost of relocating the manufactured home to a new location.

1.8 If the Authority determines that the Tenant's manufactured home cannot be relocated, the Tenant shall obtain, at the Tenant's expense, an appraisal prepared by a certified manufactured home appraiser for purposes of determining the fair market value of the home and any existing appurtenances. The appraisal shall exclude the value of the underlying land. The maximum benefits available to the Tenant under such circumstances shall be determined by the Board for a single section home and a multi-section home following the completion of an actuarial study to be performed under the direction of the Authority. Subject to the maximum limits, the amount of compensation that will be paid to the Tenant will be equal to the fair market value of the home based upon the appraisal.

1.9 To be eligible for compensation for a non-relocatable home, in addition to the application provided for in Section 3 hereof, the Tenant must deliver to the Authority a current State of Delaware title to the home, duly endorsed by the owner or owners of record, with valid releases of all liens shown on the title, and a tax release.

1.10 In lieu of the foregoing benefits, a Tenant may elect to abandon the manufactured home in the manufactured home community and collect from the Trust Fund, in lieu of any other benefits available under the Act, the sum of \$1,500 for a single section home or \$2,500 for a multi-section home. To qualify for this payment, the Tenant must deliver to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release.

2.0 Criteria for Landlord Benefits

2.1 If pursuant to the Act and these regulations, a manufactured home is determined to be non-relocatable or a Tenant abandons the home, upon application by the Landlord duly submitted to the Authority, a Landlord of a manufactured home community is entitled to receive from the Relocation Trust Fund payment in an amount determined by the Authority to be sufficient to remove and/or dispose of the manufactured home. The maximum relocation payment available to a Landlord is \$4,000.00 for a single section home or \$8,000.00 for a multi-section home. To qualify for this benefit, the Landlord must submit an application pursuant to the provisions of Section 3. Notwithstanding anything stated herein to the contrary, a Landlord shall not be entitled to any of the benefits described herein unless all of the statutory requirements set forth in the Act have been met.

2.2 Upon receipt of the title documents from the Tenant for the manufactured home that is considered to be non-relocatable or abandoned pursuant to the Act, the Authority will relinquish the title to the Landlord to facilitate the removal and/or disposal of the home from the manufactured home community. Within ten (10) calendar days after the removal and/or disposal of the manufactured home by the Landlord, the Landlord shall notify the Authority in writing of the amount of funds received by the Landlord, if any, from any subsequent sale or disposal of the manufactured home, and a copy of all documents relating to the removal and/or disposal shall be provided to the Authority, including documents relating to any expenses incurred by the Landlord in removing and/or disposing of the home.

2.3 Within thirty (30) days after receipt of the information and documents required under the Act and these regulations, the Authority shall cause a voucher to be issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the Landlord which amount shall represent the amount determined by the Authority to be sufficient to cover the cost of the removal and/or disposal of the manufactured home, less any profit realized by the Landlord from the removal and/or disposal of the home, subject to the maximum relocation payment set forth in Section 2.1 hereof.

2.4 A Landlord shall not be entitled to any payment

from the Trust Fund if the Landlord has failed to pay the Landlord's share of the total Trust Fund assessment during the course of the tenancies relating to the manufactured home community or if the Landlord has failed to remit the Tenant's share of said assessment.

3.0 Application Procedures

3.1 The Authority will provide application forms (Appendix A and Appendix B) on which applicants for benefits under the Act may apply for benefits.

3.2 In the case of an application for benefits under the Act by a Tenant, the application shall be in the form of Appendix A and shall contain the following information:

3.2.1 name of the Tenant;

3.2.2 mailing address of the Tenant;

3.2.3 telephone number of the Tenant;

3.2.4 manufactured home community park name and address;

3.2.5 space number for the manufactured home;

3.2.6 a description of the manufactured home, including its size, year, manufacturer, and whether the manufactured home is a single-wide or a double-wide;

3.2.7 a copy of the title or ownership documents relating to the manufactured home;

3.2.8 a copy of the notice of termination or non-renewal of the Tenant's rental agreement due to a change in use of land;

3.2.9 in the case of an application for relocation assistance, a copy of the contract between the Tenant and a licensed moving or towing contractor for the moving expenses for the home;

3.2.10 in the case of any requests for compensation for a manufactured home considered by the Tenant to be non-relocatable, a description of the facts which the Tenant relies upon in support of the Tenant's contention that the manufactured home is in fact non-relocatable based upon the criteria provided for in the Act and these regulations, together with any and all documents relating to the purchase of the manufactured home and any improvements made to the manufactured home by the Tenant;

3.2.11 a certification by the Tenant that the Tenant has paid the Tenant's share of the Trust Fund assessments during the course of the Tenant's tenancy.

3.3 In the case of an application for benefits under the Act by a Landlord, the application shall be in the form of Appendix B and shall contain the following information:

3.3.1 the name of the Landlord;

3.3.2 the name of the manufactured home community;

3.3.3 the mailing address of the Landlord;

3.3.4 the telephone number of the Landlord and if the Landlord is not an individual, the name of the designated representative of the Landlord;

3.3.5 a description of each manufactured home for which the Landlord is seeking financial assistance;

3.3.6 a copy of the notice of termination or non-renewal of the rental agreement due to a change in use of land;

3.3.7 a contract with a licensed moving or towing contractor for the removal and/or disposal of the manufactured home;

3.3.8 an itemization of all expenses, other than the expenses reflected in the contract between the Landlord and the moving or towing contractor, together with associated documents, which the Landlord anticipates will be incurred in removing and/or disposing of the manufactured home from the manufactured home community;

3.3.9 a certification by the Landlord that the Landlord has paid the Landlord's share of the total Trust Fund assessment during the course of the tenancies for the manufactured home community and has remitted to the Authority the Tenant's share collected by the Landlord.

4.0 Assistance and Data Gathering

4.1 When requested, the Authority shall provide assistance to Landlords and Tenants in completing application forms.

4.2. The Authority's staff may conduct on-site inspections and/or phone interviews with the applicants to acquire data necessary to enable the Authority to carry out its duties under the Act.

5.0 Application Review Procedures

5.1 The Authority has the power to approve applications pursuant to the Act.

5.2 The Authority or the Authority's staff will review applications and determine whether or not the procedural requirements under the Act and these regulations have been met. The Authority shall not be required to render a decision on any application unless and until the Applicant has submitted a completed application prepared in accordance with the Act and these regulations, and the Authority shall have the right to reject any application that does not comply with the procedural requirements of the Act or these regulations.

5.3 The Board of Directors of the Authority, or a committee of the Board designated to make such decisions (if authorized by the Board of Directors) shall endeavor to render a decision with respect to each application no later than thirty (30) days after receipt by the Authority of a completed application prepared in accordance with the Act and these regulations.

5.4 If the Authority approves an application, benefits available under the Act shall be made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a

designated amount to the Applicant. Before any payment will be made by the Authority to the Applicant, the Applicant must provide the Authority with documentary evidence showing that the expenses for which the Applicant seeks reimbursement have been paid by the Applicant. Notwithstanding the foregoing, if an Applicant can demonstrate that due to financial hardship the Applicant cannot make such payments in advance of the payment of any benefit available under the Act, the Authority may issue a two-party check made payable to the Applicant and the contractor. Under such circumstances, the original check will be mailed to the Applicant and a copy will be mailed to the contractor.

5.5 If at the time the application is approved, the Trust Fund does not have sufficient monies to make a payment to an Applicant, the Authority shall issue a written promissory note to the Applicant for funds due and owing. Promissory Notes shall be redeemed in order of issuance of the notes as additional monies come into the Trust Fund.

5.6 If based upon the information submitted in a Tenant's completed application, the Authority determines that the Tenant's manufactured home cannot be relocated based upon the criteria set forth herein, the Tenant shall be directed to obtain, at the Tenant's expense, an appraisal prepared by a certified manufactured home appraiser, for purposes of determining the fair market value of the home and any existing appurtenances as sited, exclusive of the value of the underlying land. Within thirty (30) days after receipt of the appraisal, the Authority shall advise the Tenant of the benefits that the Authority will pay to the Tenant for the non-relocatable home. Payment shall be made to the Tenant in the manner described herein, within ten (10) days after the Tenant provides the Authority with all the documents required, including the current title to the home. Upon receipt of the title, the Authority will relinquish the title to the Landlord to facilitate the removal and/or disposal of the home from the manufactured home community.

5.7 With respect to applications submitted by the Landlord for costs associated with the removal and/or disposal of non-relocatable or abandoned manufactured homes, within thirty (30) days after the receipt of the completed application and all necessary documents and information, including the documents described in Section 5.4 hereof, the Authority shall determine the cost of removing and/or disposing of the manufactured home and shall (subject to the maximum limits set forth in Section 2.1 hereof) issue payment for said amount to the Landlord, less any profit realized by the Landlord from the removal and/or disposal of the home.

5.8 If an Applicant disagrees with the Authority's decision with respect to any application, the Applicant may petition the Authority to reconsider its decision by requesting an administrative review with the Authority no later than fourteen (14) calendar days after the Authority's

initial decision on the application. The request:

5.8.1 must be in writing;

5.8.2 must be received by the Authority within the aforesaid fourteen (14) day period; and

5.8.3 must include reasons and documentation in support of the Applicant's position.

5.9 After receipt of the Applicant's letter, the Authority will schedule an administrative review of the application at a regularly scheduled meeting of the Board of Directors of the Authority. Notice of the administrative review meeting will be sent to the Applicant at least seven (7) days in advance of the meeting. At the administrative review meeting, the Applicant shall present information or documentation to support the Applicant's position. At the administrative review meeting, the Authority will render a decision and notify the Applicant of its decision and the reason for the Authority's decision. The decision of the Authority shall be final and conclusive.

6.0 Moving and Towing Contractors

6.1 It shall be the responsibility of the Tenant and/or Landlord to enter into a contract with a towing or moving company for purposes of relocating, removing and/or disposing of a manufactured home. The contractor must be duly licensed to engage in said business in Delaware. The Authority shall not be responsible for the performance of the contractor, or have any obligation to the contractor, financial or otherwise.

7.0 Certified Manufactured Home Appraisers

7.1 The Authority shall maintain a list of certified manufactured home appraisers who are authorized and qualified to appraise manufactured homes in Delaware.

7.2 The appraiser shall be an independent appraiser who is qualified to appraise manufactured homes in Delaware.

7.3 Any appraisal required under the Act shall include the certified manufactured home appraiser's opinion as to the fair market value of the manufactured home as sited, and any existing appurtenances, but shall exclude the value of the underlying land. The appraisal shall take into consideration the replacement cost of the manufactured home, together with the age, physical condition and appearance of the home.

7.4 Any appraisal submitted by the appraiser shall include the appraiser's professional qualifications, a summary of the salient facts and conclusions of the appraiser, a description of the manufactured home, its condition, and the appraiser's analysis and conclusions.

7.5 The appraiser shall provide at least one original and three copies of each report to the Authority.

APPENDIX A

**DELAWARE MANUFACTURED HOME
RELOCATION AUTHORITY
TENANT APPLICATION FOR RELOCATION
ASSISTANCE**

I hereby request assistance from the Delaware Manufactured Home Relocation Trust Fund as set forth in 25 Del.C. §7012. By signing this form, I certify that I am a tenant as defined in 25 Del.C. §7003(u) and that I have paid my share of the total Trust Fund assessment during the course of my tenancy. I understand that it is a class A misdemeanor for a tenant or a tenant's agent to file any notice, statement, or other document required hereunder which is false or contains a material misstatement of fact.

(Signature of Tenant)

(Date)

(Social Security No.)

TENANTS NAME _____

(Please Print)

PARK NAME _____

UNIT _____

ADDRESS: _____

Space No. _____

CITY/STATE/ZIP CODE: _____

Mailing Address if different from where unit is:

PHONE NUMBER: _____

SINGLE-WIDE _____ DOUBLE-WIDE _____

UNIT SIZE: _____ YEAR: _____

MANUFACTURER: _____

Please attach: (a) a copy of your title or a notarized document showing ownership; (b) a copy of the notice of termination or non-renewal of your rental agreement due to a change in use of land; (c) if you are seeking relocation expenses, you must submit a copy of your contract with a licensed moving or towing contractor for the moving expenses for your home; (d) if you believe that your home is non-relocatable, provide a brief description of the reason for your belief. (If the Authority determines that your home is in fact non-relocatable, you must obtain at your expense, an appraisal prepared by a certified manufactured home

PROPOSED REGULATIONS

appraiser. A list of qualified appraisers may be obtained by contacting the Authority). If you elect to abandon your home, please so note below. Under the Act, the maximum benefit payable to a Tenant who elects to abandon his or her home is \$1,500.00 for a single section home and \$2,500.00 for a multi-section home.

Type of Benefits Applied For: (Check the Appropriate Benefit and Amount Requested)

- A. Relocation Expenses of Moving Home \$ _____
- B. Abandonment Payment \$ _____
- C. Non-Relocatable Home Payment \$ _____

This form must be completed and returned along with the required documents to:

Delaware Manufactured Home Relocation Authority
Dover, Delaware 19901

APPENDIX B

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY APPLICATION FOR REMOVAL AND DISPOSAL ASSISTANCE SUBMITTED BY MANUFACTURED HOME COMMUNITY OWNER

The undersigned Applicant, a manufactured home community owner, hereby requests assistance from the Delaware Manufactured Home Relocation Trust Fund pursuant to 25 Del.C. §7014. By signing this form, Applicant certifies that Applicant is the owner of a manufactured home community, as defined in 25 Del.C. §7003(l), and that Applicant has paid Applicant's share of the total Trust Fund assessment during course of the tenancies and has remitted to the Authority the tenant's share as required by law. Applicant agrees that if Applicant realizes a profit from the removal and/or disposal of a home included in this Application, Applicant will notify the Authority in writing and will reimburse the Trust Fund for any profit gained by the Applicant pertaining to that home. Applicant understands that it is a class A misdemeanor for a landlord or a landlord's agent to file any notice, statement, or other document required under Section 7014 which is false or contains a material misstatement of fact.

(Signature of Landlord) (Date)

(Social Security or E.I. Number)

LANDLORD NAME _____
(Please Print)

PARK NAME _____

PARK ADDRESS: _____
Space No. _____

CITY/STATE/ZIP CODE: _____

Mailing Address if different from where park is located:

PHONE NUMBER: _____

Total Spaces in Park: _____

TOTAL HOMES LOCATED IN PARK: _____

DATE TERMINATION/NONRENEWAL NOTICE MAILED TO TENANTS: _____

DATE RECLOCATION PLAN FILED WITH AUTHORITY: _____

Please attach: (a) a copy of the Relocation Plan and all quarterly updates to the Plan; (b) a copy of the notice of termination or non-renewal due to a change in use of land; (c) if you are seeking recovery of removal/disposal expenses, you must submit a copy of your contract with a licensed moving or towing contractor for the moving and disposal expenses for each home that is being removed or disposed of; (d) for each non-relocatable or abandoned home for which compensation is sought, complete the attached summary form and submit with this Application.

Total Removal/Disposal Expenses Claimed:\$ _____

This form must be completed and returned along with the required documents to:

Delaware Manufactured Home Relocation Authority
Dover, Delaware 19901

NON-RELOCATABLE OR ABANDONED HOME DESCRIPTION FORM HOME OWNER INFORMATION CURRENT LOCATION OF MANUFACTURED HOME

Name: _____

Address & Space Number: _____

Address: _____
City/State/Zip Code: _____
Phone Number: _____

DESCRIPTION OF HOME

Single or Multi-Wide: _____
Size: _____
Manufacturer: _____
Serial Number: _____
Year Manufactured: _____
HUD Label if any: _____

Listing of Appurtenances attached to the home, including estimate of Size:
(Awnings, Skirting, Coolers or Air Conditioners, Sheds, Porches, Carport, etc.)

DETAIL OF WORK TO BE PERFORMED AND CHARGES:

NOTE: Must include all disassembly, transportation and disposal costs.

Contractor Information:
Name: _____
Address: _____

IF APPLICANT REALIZES A PROFIT FROM THE REMOVAL AND/OR DISPOSAL OF THE HOME, APPLICANT MUST REIMBURSE THE TRUST FUND FOR ANY PROFIT GAINED BY APPLICANT PERTAINING TO THAT HOME.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF LANDSCAPE ARCHITECTS**

Statutory Authority: 24 Delaware Code,
Section 205(a)(1) (24 Del.C. §205(a)(1))
24 DE Admin. Code 200

PUBLIC NOTICE

The Delaware Board of Landscape Architects is proposing to revise its rules and regulations pursuant to 24 Del.C. Sec. 205(a)(1). The Board is proposing changes to the following Regulation:

Regulation 7.1.2 regarding the Definition and Scope of Continuing Education.

Continuing Education Hourly Requirements and Continuing Education Reporting and Documentation.

A public hearing will be held on the proposed Rules and Regulations on Thursday, December 9, 2004 at 9:00 a.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. 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.

The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Sherry Clark at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Persons may view the proposed changes to the Regulations between the hours of 8:15 a.m. to 4:15 p.m., Monday through Friday, at the Board's office at the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. There will be a reasonable fee charged for copies of the proposed changes.

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

200 Board of Landscape Architects**7.0 Continuing Education as a Condition of Biennial Renewal**

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 ~~To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in sub paragraph 7.1.2.1 below. All courses, seminars, sessions and programs are acceptable for continuing education credit if sponsored by organizations~~

listed in Rule 7.1.3. All other continuing education credits will be reviewed at the time of renewal. All self-directed activities for continuing education credit allowed by Rule 7.6 must be pre-approved and submitted by the licensee 60 days prior to the activity on the form provided in Rules 7.3 and 7.4

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

5 DE Reg. 446 (8/1/01)

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 2001 and thereafter, documentation as required by Rule 7.4 of all continuing education hours must be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit a completed Verification of Continuing Education Form provided by the Division of Professional Regulation to the Board.

7.4.1 Each licensee must retain copies of all supporting materials documenting proof of continuing education compliance for submission to the Board upon request. Supporting materials include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity and a document showing proof of attendance (i.e., certificate, a signed letter from the sponsor attesting to attendance, report of passing test score). The Board reserves its right to request additional information and/or documentation to verify continuing education compliance.

7.5 Hardship: The Board will consider any reasonable

special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

5 DE Reg. 446 (8/1/01)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Landscape Architects is available at: <http://www.state.de.us/research/AdminCode/title24/200> Board of Landscape Architecture.shtml**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF CHIROPRACTIC**

Statutory Authority: 24 Delaware Code,
Section 706(a)(1) (24 **Del.C.** §706(a)(1))
24 **DE Admin. Code** 700

PUBLIC NOTICE

The Delaware Board of Chiropractic in accordance with 24 **Del.C.** §706(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of chiropractic services.

A public hearing will be held on December 16, 2004 at 8:45 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Chiropractic, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

700 Board of Chiropractic**9.0 Crimes substantially related to the practice of chiropractic**

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of chiropractic in the State of Delaware without regard to the place of conviction:

9.1.1 Manslaughter. 11 Del.C. §632.

9.1.2 Murder by abuse or neglect in the first degree. 11 Del.C. § 634.

9.1.3 Murder in the second degree. 11 Del.C. § 635.

9.1.4 Murder in the first degree. 11 Del.C. § 636.

9.1.5 Rape in the second degree. 11 Del.C. § 772.

9.1.6 Rape in the first degree. 11 Del.C. § 773.

9.1.7 Continuous sexual abuse of a child. 11 Del.C. § 778.

9.1.8 Dangerous crime against a child. 11 Del.C. § 779.

91.9 Sexual exploitation of a child. 11 Del.C. §

1108.

9.1.10 Unlawfully dealing in child pornography. 11 Del.C. § 1109.

9.2 Crimes substantially related to the practice of chiropractic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Chiropractic is available at: <http://www.state.de.us/research/AdminCode/title24/700 Board of Chiropractic.shtml>**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF ELECTRICAL EXAMINERS**

Statutory Authority: 24 Delaware Code,
Section 1406(b) (24 **Del.C.** §1406(b))
24 **DE Admin. Code** 1400

PUBLIC NOTICE

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(b) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the work of an electrician.

A public hearing will be held at 9:00 a.m. on December 1, 2004 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

1400 Board of Electrical Examiners**17.0 Crimes substantially related to work of an electrician.**

17.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the

work of an electrician in the State of Delaware without regard to the place of conviction:

- 17.1.1 Reckless endangering in the first degree. 11 Del.C. §604
- 17.1.2 Assault in the second degree. 11 Del.C. §612
- 17.1.3 Assault in the first degree. 11 Del.C. §613
- 17.1.4 Manslaughter. 11 Del.C. §632
- 17.1.5 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 17.1.6 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 17.1.7 Murder in the second degree. 11 Del.C. §635
- 17.1.8 Murder in the first degree. 11 Del.C. §636
- 17.1.9 Unlawful sexual contact in the second degree. 11 Del.C. §768
- 17.1.10 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 17.1.11 Rape in the fourth degree. 11 Del.C. §770
- 17.1.12 Rape in the third degree. 11 Del.C. §771
- 17.1.13 Rape in the second degree. 11 Del.C. §772
- 17.1.14 Rape in the first degree. 11 Del.C. §773
- 17.1.15 Sexual extortion. 11 Del.C. §776
- 17.1.16 Continuous sexual abuse of a child. 11 Del.C. §778
- 17.1.17 Dangerous crimes against a child. 11 Del.C. §779
- 17.1.18 Kidnapping in the second degree. 11 Del.C. §783
- 17.1.19 Kidnapping in the first degree. 11 Del.C. §783A
- 17.1.20 Arson in the second degree. 11 Del.C. §802
- 17.1.21 Arson in the first degree. 11 Del.C. §803
- 17.1.22 Criminal mischief. 11 Del.C. §811
- 17.1.23 Burglary in the third degree. 11 Del.C. §824
- 17.1.24 Burglary in the second degree. 11 Del.C. §825
- 17.1.25 Burglary in the first degree. 11 Del.C. §826
- 17.1.26 Robbery in the second degree. 11 Del.C. §831
- 17.1.27 Robbery in the first degree. 11 Del.C. §832
- 17.1.28 Theft of services. 11 Del.C. §845
- 17.1.29 Extortion. 11 Del.C. §846
- 17.1.30 Identity theft. 11 Del.C. §854
- 17.1.31 Forgery. 11 Del.C. §861
- 17.1.32 Unlawful use of credit card. 11 Del.C. §903
- 17.1.33 Criminal impersonation of a police officer. 11 Del.C. §907B
- 17.1.34 Insurance fraud. 11 Del.C. §913

- 17.1.34 Home improvement fraud. 11 Del.C. §916
- 17.1.36 New home construction fraud. 11 Del.C. §917
- 17.1.37 Dealing in children. 11 Del.C. §1100
- 17.1.38 Sexual exploitation of a child. 11 Del.C. §1108
- 17.1.39 Unlawful dealing in child pornography. 11 Del.C. §1109
- 17.1.40 Sexual solicitation of a child. 11 Del.C. §1112A
- 17.1.41 Perjury in the second degree. 11 Del.C. §1222
- 17.1.42 Perjury in the first degree. 11 Del.C. §1223
- 17.1.43 Aggravated harassment. 11 Del.C. §1312
- 17.1.44 Adulteration. 11 Del.C. §1339
- 17.1.45 Possession of a firearm during a felony. 11 Del.C. §1447
- 17.1.46 Theft of a firearm. 11 Del.C. §1451
- 17.1.47 Organized crime and racketeering. 11 Del.C. §1503
- 17.1.48 Breaking and entering, etc. to place or remove equipment 11 Del.C. §2410

17.2 Crimes substantially related to the work of an electrician shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Electrical Examiners is available at: <http://www.state.de.us/research/AdminCode/title24/1400> Board of Electrical Examiners.shtml

DIVISION OF PROFESSIONAL REGULATION BOARD OF MEDICAL PRACTICE

Statutory Authority: 24 Delaware Code,
Section 1730(a)(12) (24 Del.C. §1730(a)(12))
24 DE Admin. Code 1700

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. 1730(a)(12), the Delaware Board of Medical Practice proposes to revise its Rules and Regulations as mandated by Senate Bill 229. The proposed revision will add a new section that specifically identifies those crimes which are substantially related to the practice of medicine and the practice of licensed respiratory care and

practice as a licensed physician's assistant.

A public hearing will be held on the proposed Rule and Regulation on January 4, 2005 at 2:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rule and Regulation. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rule and Regulation or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling her at (302) 744-4520.

AUTHORITY

Pursuant to 74 **Del. Laws** c. 262, (Senate Bill No. 229 of the 142 General Assembly, 2004, as amended), the Board was directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of medicine and the practice of licensed respiratory care and practice as a licensed physician's assistant.

PURPOSE

The Board of Medical Practice believes that the State of Delaware has a compelling public policy interest in ensuring that its licensed professionals not only have specified levels of educational and professional competence but also possess sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Licensed professionals, particularly those in health care related fields, often come into contact with clients and patients and other members of the public at times when they may be sick, infirmed or otherwise extremely vulnerable to undue influence or other forms of misuse, fraud and abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the regulation of such professionals takes into consideration not only the individual's technical competence but his or her demonstrated propensity to behave in a way that does not expose the client population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed health care professionals.

1700 Board of Medical Practice

29.0 Crimes Substantially Related to the Practice of Medicine and the Practice of Licensed Respiratory Care and Practice as a Licensed Physician's Assistant

The Board finds that for purposes of licensing, renewal, reinstatement and discipline, the conviction of any of the following crimes, or of the attempt to commit or a conspiracy to commit or conceal the following crimes or substantially similar crimes in another state or jurisdiction, is deemed to be substantially related to the practice of Medicine, Respiratory Care and Physician's Assistants in the State of Delaware without regard to the place of conviction:

29.1 For the purposes of this section the following definitions shall apply:

"Conviction" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §4218 of Title 11 of the Delaware Code (probation before judgment) or under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program).

"Jurisdiction" Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

29.2 Any crime which involves the use of physical force or violence toward or upon the person of another and shall include by way of example and not of limitation the following crimes set forth in Title 11 of the Delaware Code Annotated:

Assaults and Related Offenses

29.2.1 §601. Offensive touching;

29.2.2 §602. Menacing;

29.2.3 §603. Reckless endangering in the second degree;

29.2.4 §604. Reckless endangering in the first degree;

29.2.5 §605. Abuse of a pregnant female in the second degree;

29.2.6 §606. Abuse of a pregnant female in the first degree;

29.2.7 §611. Assault in the third degree;

29.2.8 §612. Assault in the second degree;

29.2.9 §613. Assault in the first degree;

29.2.10 §614. Assault on a sports official.

29.2.11 §615. Assault by abuse or neglect;

29.2.12 §621. Terroristic threatening;

29.2.13 §625. Unlawfully administering drugs;

29.2.14 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;

29.2.15 §627. Prohibited acts as to substances releasing vapors or fumes;

29.2.16 §628. Vehicular assault in the second degree;

29.2.17 §629. Vehicular assault in the first

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| <p><u>degree;</u></p> <p>29.2.18 §630. Vehicular homicide in the</p> <p><u>second degree;</u></p> <p>29.2.19 §630A. Vehicular homicide in the first</p> <p><u>degree;</u></p> <p>29.2.20 §631. Criminally negligent homicide;</p> <p>29.2.21 §632. Manslaughter;</p> <p>29.2.22 §633. Murder by abuse or neglect in</p> <p><u>the second degree;</u></p> <p>29.2.23 §634. Murder by abuse or neglect in</p> <p><u>the first degree;</u></p> <p>29.2.24 §635. Murder in the second degree;</p> <p>29.2.25 §636. Murder in the first degree;</p> <p>29.2.26 §645. Promoting suicide.</p> <p><u>Abortion and Related Offenses</u></p> <p>29.2.27 §651. Abortion;</p> <p>29.2.28 §653. Issuing abortifacient articles.</p> <p><u>Sexual Offenses</u></p> <p>29.2.29 §763. Sexual harassment;</p> <p>29.2.30 §764. Indecent exposure in the</p> <p><u>second degree;</u></p> <p>29.2.31 §765. Indecent exposure in the first</p> <p><u>degree;</u></p> <p>29.2.32 §766. Incest;</p> <p>29.2.33 §767. Unlawful sexual contact in the</p> <p><u>third degree;</u></p> <p>29.2.34 §768. Unlawful sexual contact in the</p> <p><u>second degree;</u></p> <p>29.2.35 §769. Unlawful sexual contact in the</p> <p><u>first degree;</u></p> <p>29.2.36 §770. Rape in the fourth degree;</p> <p>29.2.37 §771. Rape in the third degree;</p> <p>29.2.38 §772. Rape in the second degree;</p> <p>29.2.39 §773. Rape in the first degree;</p> <p>29.2.40 §776. Sexual extortion;</p> <p>29.2.41 §777. Bestiality;</p> <p>29.2.42 §778. Continuous sexual abuse of a</p> <p><u>child;</u></p> <p>29.2.43 §780. Female genital mutilation.</p> <p><u>Kidnapping and Related Offenses</u></p> <p>29.2.44 §781. Unlawful imprisonment in the</p> <p><u>second degree;</u></p> <p>29.2.45 §782. Unlawful imprisonment in the</p> <p><u>first degree;</u></p> <p>29.2.46 §783. Kidnapping in the second</p> <p><u>degree;</u></p> <p>29.2.47 §783A. Kidnapping in the first</p> <p><u>degree;</u></p> <p>29.2.48 §785. Interference with custody;</p> <p><u>Coercion</u></p> <p>29.2.49 §791. Acts constituting coercion;</p> <p>29.3 Any crime which involves dishonesty or</p> <p>false, fraudulent or aberrant behavior and shall include by</p> <p>way of example and not of limitation the following crimes</p> | <p>listed in Title 11 of the Delaware Code Annotated:</p> <p><u>Arson and Related Offenses</u></p> <p>29.3.1 §801. Arson in the third degree;</p> <p>29.3.2 §802. Arson in the second degree;</p> <p>29.3.3 §803. Arson in the first degree;</p> <p>29.3.4 §804. Reckless burning or exploding;</p> <p>29.3.5 §805. Cross or religious symbol</p> <p><u>burning;</u></p> <p><u>Criminal Trespass and Burglary</u></p> <p>29.3.6 §820. Trespassing with intent to peer</p> <p>or peep into a window or door of another;</p> <p>29.3.7 §821. Criminal trespass in the third</p> <p><u>degree;</u></p> <p>29.3.8 §822. Criminal trespass in the second</p> <p><u>degree;</u></p> <p>29.3.9 §823. Criminal trespass in the first</p> <p><u>degree;</u></p> <p>29.3.10 §824. Burglary in the third degree;</p> <p>29.3.11 §825. Burglary in the second degree;</p> <p>29.3.12 §826. Burglary in the first degree;</p> <p>29.3.13 §828. Possession of burglar's tools or</p> <p>instruments facilitating theft;</p> <p><u>Robbery</u></p> <p>29.3.14 §831. Robbery in the second degree;</p> <p>29.3.15 §832. Robbery in the first degree.</p> <p>29.3.16 §835. Carjacking in the second</p> <p><u>degree;</u></p> <p>29.3.17 §836. Carjacking in the first degree;</p> <p><u>Theft and Related Offenses</u></p> <p>29.3.18 §840. Shoplifting; class G felony;</p> <p>29.3.19 §840A. Use of illegitimate retail sales</p> <p>receipt or Universal Product Code Label.</p> <p>29.3.20 §841. Theft;</p> <p>29.3.21 §842. Theft; lost or mislaid property;</p> <p><u>mistaken delivery.</u></p> <p>29.3.22 §843. Theft; false pretense.</p> <p>29.3.23 §844. Theft; false promise.</p> <p>29.3.24 §845. Theft of services.</p> <p>29.3.25 §846. Extortion;</p> <p>29.3.26 §848. Misapplication of property;</p> <p>29.3.27 §849. Theft of rented property;</p> <p>29.3.28 §850. Use, possession, manufacture,</p> <p>distribution and sale of unlawful telecommunication and</p> <p>access devices.</p> <p>29.3.29 §851. Receiving stolen property;</p> <p>29.3.30 §853. Unauthorized use of a vehicle;</p> <p>29.3.31 §854. Identity theft;</p> <p>29.3.32 §859. Larceny of livestock;</p> <p>29.3.33 §860. Possession of shoplifter's tools</p> <p>or instruments facilitating theft;</p> <p><u>Forgery and Related Offenses</u></p> <p>29.3.34 §861. Forgery; class F felony;</p> <p>29.3.35 §862. Possession of forgery devices;</p> <p><u>Offenses Involving Falsification of Records</u></p> |
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| <u>29.3.36 §871. Falsifying business records;</u> | <u>services.</u> |
| <u>29.3.37 §872. Falsifying business records;</u> | <u>29.3.72 §935. Misuse of computer system</u> |
| <u>29.3.38 §873. Tampering with public records</u> | <u>information.</u> |
| <u>in the second degree;</u> | <u>29.3.73 §936. Destruction of computer</u> |
| <u>29.3.39 §876. Tampering with public records</u> | <u>equipment.</u> |
| <u>in the first degree;</u> | <u>29.3.74 §937. Unrequested or unauthorized</u> |
| <u>29.3.40 §877. Offering a false instrument for</u> | <u>electronic mail or use of network or software to cause same.</u> |
| <u>filing;</u> | <u>29.3.75 §938. Failure to promptly cease</u> |
| <u>29.3.41 §878. Issuing a false certificate;</u> | <u>electronic communication upon request.</u> |
| <u>Bribery Not Involving Public Servants</u> | <u>Offenses Relating to Marriage</u> |
| <u>29.3.42 §881. Bribery;</u> | <u>29.3.76 §1001. Bigamy;</u> |
| <u>29.3.43 §882. Bribe receiving;</u> | <u>29.3.77 §1003. Bigamous marriage contracted</u> |
| <u>Frauds on Creditors</u> | <u>outside the State.</u> |
| <u>29.3.44 §891. Defrauding secured creditors;</u> | <u>29.4 Any crime which involves misuse or abuse</u> |
| <u>29.3.45 §892. Fraud in insolvency;</u> | <u>of children or animals and shall include by way of example</u> |
| <u>29.3.46 §893. Interference with levied-upon</u> | <u>and not of limitation the following crimes listed in Title 11 of</u> |
| <u>property;</u> | <u>the Delaware Code Annotated:</u> |
| <u>Other Frauds and Cheats</u> | <u>Child Welfare; Sexual Offenses, Animal</u> |
| <u>29.3.47 §900. Issuing a bad check;</u> | <u>Offenses</u> |
| <u>29.3.48 §903. Unlawful use of credit card;</u> | <u>29.4.1 §1100. Dealing in children;</u> |
| <u>29.3.49 §903A. Reencoder and scanning</u> | <u>29.4.2 §1101. Abandonment of child;</u> |
| <u>devices;</u> | <u>29.4.3 §1102. Endangering the welfare of a</u> |
| <u>29.3.50 §906. Deceptive business practices;</u> | <u>child;</u> |
| <u>29.3.51 §907. Criminal impersonation;</u> | <u>29.4.4 §1105. Endangering the welfare of an</u> |
| <u>29.3.52 §907A. Criminal impersonation,</u> | <u>incompetent person;</u> |
| <u>accident related;</u> | <u>29.4.5 §1106. Unlawfully dealing with a</u> |
| <u>29.3.53 §907B. Criminal impersonation of a</u> | <u>child;</u> |
| <u>police officer;</u> | <u>29.4.6 §1107. Endangering children;</u> |
| <u>29.3.54 §908. Unlawfully concealing a will;</u> | <u>29.4.7 §1108. Sexual exploitation of a child;</u> |
| <u>29.3.55 §909. Securing execution of</u> | <u>29.4.8 §1109. Unlawfully dealing in child</u> |
| <u>documents by deception;</u> | <u>pornography;</u> |
| <u>29.3.56 §910. Debt adjusting;</u> | <u>29.4.9 §1111. Possession of child</u> |
| <u>29.3.57 §911. Fraudulent conveyance of</u> | <u>pornography;</u> |
| <u>public lands;</u> | <u>29.4.10 §1112. Sexual offenders; prohibitions</u> |
| <u>29.3.58 §912. Fraudulent receipt of public</u> | <u>from school zones.</u> |
| <u>lands,;</u> | <u>29.4.11 §1112A. Sexual solicitation of a child;</u> |
| <u>29.3.59 §913. Insurance fraud;</u> | <u>29.4.12 §1113. Criminal non-support and</u> |
| <u>29.3.60 §913A. Health care fraud;</u> | <u>aggravated criminal non-support.</u> |
| <u>29.3.61 §914. Use of consumer identification</u> | <u>29.4.13 §1114. Body-piercing; tattooing or</u> |
| <u>information;</u> | <u>branding;</u> |
| <u>29.3.62 §915. Use of credit card information;</u> | <u>29.4.14 §1114A. Tongue-splitting;</u> |
| <u>29.3.63 §915A. Credit and debit card</u> | <u>29.4.15 §1116. Sale or distribution of tobacco</u> |
| <u>transaction receipts;</u> | <u>products to minors;</u> |
| <u>29.3.64 §916. Home improvement fraud;</u> | <u>29.4.16 §1117. Notice;</u> |
| <u>29.3.65 §917. New home construction fraud;</u> | <u>29.4.17 §1119. Distribution of cigarettes</u> |
| <u>Offenses Relating to Recorded Devices</u> | <u>through vending machines;</u> |
| <u>29.3.66 §920. Transfer of recorded sounds;</u> | <u>29.4.18 §1120. Distribution of tobacco</u> |
| <u>29.3.67 §921. Sale of transferred recorded</u> | <u>products;</u> |
| <u>sounds;</u> | <u>29.4.19 §1124. Purchase or receipt of tobacco</u> |
| <u>29.3.68 §922. Improper labeling;</u> | <u>products by minor;</u> |
| <u>Computer Related Offenses</u> | <u>29.4.20 §1325. Cruelty to animals;</u> |
| <u>29.3.69 §932. Unauthorized access.</u> | <u>29.4.21 §1325A. The unlawful trade in dog or</u> |
| <u>29.3.70 §933. Theft of computer services.</u> | <u>cat by-products;</u> |
| <u>29.3.71 §934. Interruption of computer</u> | <u>29.4.22 §1326. Animals; fighting and baiting</u> |

prohibited;

29.4.23 §1327. Maintaining a dangerous

animal;

29.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Bribery and Improper Influence

29.5.1 §1201. Bribery;

29.5.2 §1203. Receiving a bribe;

29.5.3 §1205. Giving unlawful gratuities;

29.5.4 §1206. Receiving unlawful gratuities;

29.5.5 §1207. Improper influence;

29.5.6 §1211. Official misconduct;

29.5.7 §1212. Profiteering.

Perjury and related offenses

29.5.8 §1221. Perjury in the third degree;

29.5.9 §1222. Perjury in the second degree;

29.5.10 §1223. Perjury in the first degree;

29.5.11 §1233. Making a false written

statement;

29.5.12 §1239. Wearing a disguise during the

commission of a felony;

29.5.13 §1240. Terroristic threatening of public officials or public servants;

29.5.14 §1241. Refusing to aid a police

officer;

29.5.15 §1243. Obstructing fire-fighting

operations;

29.5.16 §1244. Hindering prosecution;

29.5.17 §1245. Falsely reporting an incident;

29.5.18 §1246. Compounding a crime;

29.5.19 §1248. Obstructing the control and

suppression of rabies;

29.5.20 §1249. Abetting the violation of

driver's license restrictions;

29.5.21 §1250. Offenses against law-

enforcement animals;

29.5.22 §1251. Escape in the third degree;

29.5.23 §1252. Escape in the second degree;

29.5.24 §1253. Escape after conviction;

29.5.25 §1254. Assault in a detention facility;

29.5.26 §1257A. Use of an animal to avoid

capture;

29.5.27 §1259. Sexual relations in detention

facility;

29.5.28 §1260. Misuse of prisoner mail.

Offenses Relating to Judicial and Similar

Proceedings

29.5.29 §1261. Bribing a witness;

29.5.30 §1262. Bribe receiving by a witness;

29.5.31 §1263. Tampering with a witness;

29.5.32 §1263A. Interfering with child

witness.

29.5.33 §1264. Bribing a juror;

29.5.34 §1265. Bribe receiving by a juror;

29.5.35 §1266. Tampering with a juror;

29.5.36 §1267. Misconduct by a juror;

29.5.37 §1269. Tampering with physical

evidence;

29.5.38 §1271. Criminal contempt;

29.5.39 §1271A. Criminal contempt of a domestic violence protective order;

29.5.40 §1273. Unlawful grand jury

disclosure.

29.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the Delaware Code Annotated which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.

Disorderly Conduct and Related Offenses

29.6.1 §1301. Disorderly conduct;

29.6.2 §1302. Riot;

29.6.3 §1304. Hate crimes;

29.6.4 §1311. Harassment;

29.6.5 §1312. Aggravated harassment;

29.6.6 §1312A. Stalking;

29.6.7 §1313. Malicious interference with

emergency communications;

29.6.8 §1315. Public intoxication;

29.6.9 §1316. Registration of out-of-state

liquor agents;

29.6.10 §1320. Loitering on property of a state-supported school, college or university;

29.6.11 §1321. Loitering

29.6.12 §1322. Criminal nuisance;

29.6.13 §1323. Obstructing public passages;

29.6.14 §1324. Obstructing ingress to or

egress from public buildings;

29.6.15 §1331. Desecration;

29.6.16 §1332. Abusing a corpse;

29.6.17 §1333. Trading in human remains

and associated funerary objects.

29.6.18 §1335. Violation of privacy;

29.6.19 §1338. Bombs, incendiary devices,

Molotov cocktails and explosive devices;

29.6.20 §1339. Adulteration;

29.6.21 §1340. Desecration of burial place.

Offenses Involving Public Indecency

29.6.22 §1341. Lewdness;

29.6.23 §1342. Prostitution;

29.6.24 §1343. Patronizing a prostitute prohibited.

29.6.25 §1351. Promoting prostitution in the third degree;

29.6.26 §1352. Promoting prostitution in the second degree;

29.6.27 §1353. Promoting prostitution in the first degree;

29.6.28 §1355. Permitting prostitution;

Obscenity

29.6.29 §1361. Obscenity; acts constituting;

29.6.30 §1365. Obscene literature harmful to

minors;

29.6.31 §1366. Outdoor motion picture

theatres;

Offenses Involving Gambling

29.6.32 §1403. Advancing gambling in the

first degree;

29.6.33 §1404. Providing premises for

gambling;

29.6.34 §1405. Possessing a gambling device;

class A misdemeanor.

29.6.35 §1406. Being concerned in interest in

keeping any gambling device;

29.6.36 §1407. Engaging in a crap game;

29.6.37 §1411. Unlawfully disseminating

gambling information.

29.7 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the Delaware Code Annotated:

29.7.1 §4751. Prohibited acts A;

29.7.2 §4752. Prohibited acts B;

29.7.3 §4752A. Unlawful delivery of noncontrolled substance.

29.7.4 §4753. Prohibited acts C.

29.7.5 §4753A. Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs.

29.7.6 §4754. Prohibited acts D;

29.6.7 §4754A. Possession and delivery of noncontrolled prescription drug.

29.7.8 §4755. Prohibited acts E;

29.7.9 §4756. Prohibited acts;

29.7.10 §4757. Hypodermic syringe or needle; delivering or possessing; disposal; exceptions;

29.7.11 §4758. Keeping drugs in original containers.

29.7.12 §4761. Distribution to persons under 21 years of age;

29.7.13 §4761A. Purchase of drugs from

minors;

29.7.14 §4767. Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;

29.7.15 §4768. Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship.

29.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

29.8.1 §1442. Carrying a concealed deadly weapon;

29.8.2 §1443. Carrying a concealed dangerous instrument;

29.7.3 §1444. Possessing a destructive weapon;

29.8.4 §1445. Unlawfully dealing with a dangerous weapon;

29.8.5 §1446. Unlawfully dealing with a switchblade knife;

29.8.6 §1447. Possession of a deadly weapon during commission of a felony;

29.8.7 §1447A. Possession of a firearm during commission of a felony;

29.8.8 §1448. Possession and purchase of deadly weapons by persons prohibited;

29.8.9 §1448A. Criminal history record checks for sales or firearms;

29.8.10 §1449. Wearing body armor during commission of felony;

29.8.11 §1450. Receiving a stolen firearm;

29.8.12 §1451. Theft of a firearm;

29.8.13 §1452. Unlawfully dealing with knuckles-combination knife;

29.8.14 §1453. Unlawfully dealing with martial arts throwing star;

29.8.15 §1454. Giving a firearm to person prohibited;

29.8.16 §1455. Engaging in a firearms transaction on behalf of another;

29.8.17 §1456. Unlawfully permitting a minor access to a firearm;

29.8.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;

29.8.19 §1458. Removing a firearm from the possession of a law enforcement officer;

29.8.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number;

29.8.21 §1471. Prohibited acts.

- Offenses Involving Drug Paraphernalia
29.8.22 §4774. Penalties.
- Offenses Involving Organized Crime and Racketeering
29.8.23 §1504. Criminal Penalties for Organized Crime & Racketeering
- Offenses Involving Intimidation of Victims or Witnesses
29.8.24 §3532. Acts of Intimidation: Class E felony
29.8.25 §3533. Aggravated act of intimidation, Class D felony
- Other Crimes
29.8.26 Title 3 §1041. Willfully or maliciously starting fires; Carelessly Starting Fires;
29.8.27 §1043. Setting fire to woodland; Unseasonable Marsh Burning.
29.8.28 Title 4 §901. Offenses carrying penalty of imprisonment for 3 to 6 months;
29.8.29 §902. Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment of 3 to 6 months on failure to pay fine;
29.8.30 §903. Offenses carrying penalty of fine of not more than \$100 imprisonment for 1 month on failure to pay fine;
29.8.31 §904. Offenses concerning certain persons;
29.8.32 §905. Unlicensed manufacture of alcoholic liquor; Possession of still, apparatus, mash, etc., by unlicensed person;
29.8.33 §906. Transportation or shipment;
29.8.34 §907. Interference with officer or inspector;
29.8.35 §908. Failure of licensee to file report;
29.8.36 §909. Violation of rules respecting liquor taxes.
29.8.37 Title 7 §1717. Unauthorized acts against a service guide or seeing eye dog.
29.8.38 Title 11 §2403. Manufacture, possession or sale of intercepting device;
29.8.39 §2410. Breaking and entering, etc. to place or remove equipment;
29.8.40 §2412. Obstruction, impediment or prevention of interception;
29.8.41 §2422. Divulging contents of communications;
29.8.42 §3532. Act of intimidation;
29.8.43 §3533. Aggravated act of intimidation;
29.8.44 §3534. Attempt to intimidate;
29.8.45 §8523. Penalties [for violation of reporting provision re: SBI];
29.8.46 §8562. Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information]
- 29.8.47 §8572. Penalties [for providing false information when seeking employment in a public school]
29.8.48 §9016. Filing false claim [under Victims' Compensation Fund].
29.8.49 Title 12 §210. Alteration, theft or destruction of Will.
29.8.50 Title 16 §1136. Abuse or neglect of a patient or resident of a nursing facility.
29.8.51 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;
29.8.52 §2133. Penalties; jurisdiction of justices of the peace.
29.8.53 §2315. False statements;
29.8.54 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration sticker or vehicle I identification plate;
29.8.55 §2620. False statements; incorrect or incomplete information;
29.8.56 §2703. License to operate a motorcycle, motorbike, etc.;
29.8.57 §2710. Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age;
29.8.58 §2722. Restricted licenses based on driver's physical limitations;
29.8.59 §2751. Unlawful application for or use of license or identification card;
29.8.60 §2752. False statements;
29.8.61 §2756. Driving vehicle while license is suspended or revoked; penalty;
29.8.62 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.
29.8.63 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;
29.8.64 §2305. Penalties; jurisdiction.
29.8.65 Title 24 §903. Sale to persons under 21 or intoxicated persons.
29.8.66 Title 29 §3107. Motor vehicle safety-responsibility; False statements;
29.8.67 §4175A. Reckless driving;
29.8.68 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties.
29.8.69 §4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;
29.8.70 §4183. Parking areas for vehicles being used by persons with disabilities;
29.8.71 §4198J. Bicycling on highways under influence of drugs or alcohol;
29.8.72 §4198O. Operation of electric

personal assistive mobility devices (EPAMD);

29.8.73 §4201. Duty of driver involved in accident resulting in property damage or injury;

29.8.74 §4202. Duty of driver involved in accident resulting in injury or death to any person;

29.8.75 §4203. Duty to report accidents; evidence;

29.8.76 §4204. Report of damaged vehicles; cars involved in fatal accidents;

29.8.77 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires;

29.8.78 §6420. Odometers penalties;

29.8.79 §6702. Driving vehicle without consent of owner;

29.8.80 §6704. Receiving or transferring stolen vehicle;

29.8.81 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity;

29.8.82 §6707. Penalty;

29.8.83 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers;

29.8.84 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers.

29.8.85 Title 30 §571. Attempt to evade or defeat tax;

29.8.86 §572. Failure to collect or pay over tax;

29.8.87 §573. Failure to file return, supply information or pay tax;

29.8.88 §574. Fraud and false statements;

29.8.89 §576. Misdemeanors.

29.8.90 Title 31 §1007. Fraudulent acts penalties;

29.8.91 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]

29.9 Any crime which is a violation of Title 24, Chapter 17 (Delaware Medical Practices Act) as it may be amended from time to time or of any other statute which requires the reporting of a medical situation or condition to state, federal or local authorities or a crime which constitutes a violation of the Medical Practice Act of the state in which the conviction occurred or in which the physician is licensed.

29.10 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del. C. §10119 to address imminent peril to the public health, safety or welfare. The Board also specifically reserves the jurisdiction to review any crime committed by

an applicant for licensure as a physician and to determine whether to waive the disqualification under 24 Del.C. §1720(d).

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Medical Practice is available at: <http://www.state.de.us/research/AdminCode/title24/1700> Board of Medical Practice.shtml**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE
RESPIRATORY CARE PRACTICE
ADVISORY COUNCIL**

Statutory Authority: 24 Delaware Code,
Section 1770B(e) (24 Del.C. §1770B(e)(5))
24 DE Admin. Code 1770

PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Ch. 101 and 24 Del.C. §1770B(e)(5), the Respiratory Care Practice Advisory Council of the Delaware Board of Medical Practice proposes to revise its Rules and Regulations. The proposed revisions will delete a subsection regarding the accumulation of continuing education and add a new section to address and regulate the administration of sedation and analgesia by Respiratory Care Practitioners.

A public hearing will be held on the proposed Rules and Regulations on January 18, 2005 at 1:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling her at (302) 744-4520.

1770 Respiratory Care Practice Advisory Council

8.0 Continuing Education

8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years.

Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1.2 Contact hours shall be prorated for new licensees in accordance with the following schedule:

| | |
|---|----------|
| Two years remaining in the licensing cycle requires - | 20 hours |
| One year remaining in the licensing cycle requires - | 10 hours |
| Less than one year remaining in the licensing cycle - | exempt |

8.2 Exemptions

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

8.3.1 Definition of Contact Hours

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1)

contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

8.3.2 Learner Objectives

8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

8.3.5 Types of Activities/Programs

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the

following elements:

8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

Recredentialing exam

Pediatric/perinatal specialty exam

Pulmonary function credentialing exams

Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must

be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

American Association for Respiratory Care.

American Medical Association under Physician Category I.

American Thoracic Society

American Association of Cardiovascular and Pulmonary Rehabilitation

American Heart Association

American Nurses Association

American College of Chest Physicians

American Society of Anesthesiologists

American Sleep Disorders Association

Other professional or educational organizations as approved periodically by the Council.

8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours per renewal period shall include the following categories:

4 DE Reg. 694 (10/1/00)

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

~~8.5.2.6 Presentation or participation in review or recertification in American Heart Association or Red Cross provider or instructor programs, such as Advanced Cardiac Life Support, Basic Life Support, Pediatric Advanced Life Support, or CPR, to a maximum of two contact hours per program.~~

8.5.2.7 Academic course work, related to health care or health care administration, to a maximum of four contact hours.

8.6 Review/Approval of Continuing Education Contact Hours

8.6.1 The Council may review the

documentation of any respiratory care practitioner's continuing education.

8.6.2 The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6.3 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6.4 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6.5 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6.6 Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.

8.6.7 An applicant wishing to reinstate an expired license shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

4 DE Reg. 694 (10/1/00)

12.0 Sedation and analgesia regulations:

Moderate Sedation – A drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is maintained.

Direct Supervision – The physician will be present during the initial and continued administration of moderate sedation and will interpret monitoring.

12.1 Certain recognized and accepted respiratory care procedures may involve the administration of sedative and analgesic medications by Respiratory Care Practitioners and the monitoring of patients who have received such medications. Such procedures include, but are not limited to:

12.1.1 Bronchoscopy

12.1.2 Intubation

12.1.3 Administration of anesthetic agents during mechanical ventilation

12.2 In the process of providing respiratory care, Respiratory Care Practitioners, under the direct supervision of a physician with clinical privileges to administer moderate sedation, may administer sedative and analgesic medications to induce moderate sedation, pursuant to the order of a licensed physician, who is licensed and credentialed to prescribe and administer the particular medication(s). The

route of administration shall be appropriate to the procedure.

12.3 Any administration and monitoring by a Respiratory Care Practitioner of a sedative or analgesic which may induce moderate sedation must be:

12.3.1 In accordance with the current version of the "Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologist" published by the American Society of Anesthesiologists as the same may from time to time be amended, AND,

12.3.2 Undertaken only by Respiratory Care Practitioners who have successfully completed a formal educational experience and periodic competency assessment in the administration of sedatives, and analgesics. Such training and education shall be expressly approved for facilities accredited by a nationally recognized accrediting body approved by federal regulations in which the procedure is being performed. Such training shall include:

12.3.2.1 Competency assessment for licensed Respiratory Care Practitioners administering sedation and analgesic:

12.3.2.1.1 Successfully complete a formal dysrhythmia or EKG module or course, or the institution's approved dysrhythmia competency course.

12.3.2.1.2 Successfully complete a medication pharmacology competency specific to sedation and analgesic.

12.3.2.1.3 Current Basic Cardiac Life Support certification.

12.3.2.1.4 Completion of a department specific competency related to sedation and analgesic provided by facilities accredited by a nationally recognized accrediting body approved by federal regulations.

12.3.2.1.5 Successful completion of the relevant Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) or Neonatal Resuscitation Program (NRP) course every two (2) years.

12.3.3 These periodic competencies require approval in writing by the department medical director or by another Delaware licensed physician who is in a position to assess the individual's qualifications. The Respiratory Care Practitioner must maintain his or her records of completion of the formal education and periodic competence certification for a period of three (3) years.

12.4 Respiratory Care Practitioners shall not administer sedative or analgesic substances in the home care environment

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Respiratory Care Practice Advisory Council is available at: <http://www.state.de.us/research/AdminCode/title24/1770> Respiratory Care Practice Advisory Council.shtml**

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PLUMBING EXAMINERS**

Statutory Authority: 24 Delaware Code
Section 1805(b) (24 Del.C. §1805(b))
24 DE Admin. Code 1800

PUBLIC NOTICE

The State Board of Plumbing Examiners in accordance with 24 Del.C. §1805(b) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identified crimes that are substantially related to plumbing services.

A public hearing will be held at 9:00 a.m. on December 14, 2004 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board Plumbing Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

1800 Board of Plumbing Examiners**8.0 Crimes substantially related to plumbing services.**

8.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to plumbing services or in the State of Delaware without regard to the place of conviction:

- 8.1.1 Reckless endangering in the first degree. 11 Del.C. §604
- 8.1.2 Assault in the second degree. 11 Del.C. §612
- 8.1.3 Assault in the first degree. 11 Del.C. §613
- 8.1.4 Manslaughter. 11 Del.C. §632
- 8.1.5 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 8.1.6 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 8.1.7 Murder in the second degree. 11 Del.C. §635
- 8.1.8 Murder in the first degree. 11 Del.C. §636
- 8.1.9 Unlawful sexual contact in the second degree. 11 Del.C. §768

- 8.1.10 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 8.1.11 Rape in the fourth degree. 11 Del.C. §770
- 8.1.12 Rape in the third degree. 11 Del.C. §771
- 8.1.13 Rape in the second degree. 11 Del.C. §772
- 8.1.14 Rape in the first degree. 11 Del.C. §773
- 8.1.15 Sexual extortion. 11 Del.C. §776
- 8.1.16 Continuous sexual abuse of a child. 11 Del.C. §778
- 8.1.17 Kidnapping in the second degree. 11 Del.C. §783
- 8.1.18 Kidnapping in the first degree. 11 Del.C. §783A
- 8.1.19 Arson in the second degree. 11 Del.C. §802
- 8.1.20 Arson in the first degree. 11 Del.C. §803
- 8.1.21 Criminal mischief. 11 Del.C. §811
- 8.1.22 Burglary in the third degree. 11 Del.C. §824
- 8.1.23 Burglary in the second degree. 11 Del.C. §825
- 8.1.24 Burglary in the first degree. 11 Del.C. §826
- 8.1.25 Robbery in the second degree. 11 Del.C. §831
- 8.1.26 Robbery in the first degree. 11 Del.C. §832
- 8.1.27 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842
- 8.1.28 Theft; false pretense. 11 Del.C. §843
- 8.1.29 Theft, false promise. 11 Del.C. §844
- 8.1.30 Theft of services. 11 Del.C. §845
- 8.1.31 Extortion. 11 Del.C. §846
- 8.1.32 Identity theft. 11 Del.C. §854
- 8.1.33 Forgery. 11 Del.C. §861
- 8.1.34 Falsifying business records. 11 Del.C. §871
- 8.1.35 Unlawful use of credit card. 11 Del.C. §903
- 8.1.36 Reencoder and scanning devices. 11 Del.C. §903A
- 8.1.37 Insurance fraud. 11 Del.C. §913
- 8.1.38 Home improvement fraud. 11 Del.C. §916
- 8.1.39 New home construction fraud. 11 Del.C. §917
- 8.1.40 Dealing in children. 11 Del.C. §1100
- 8.1.41 Sexual exploitation of a child. 11 Del.C. §1108
- 8.1.42 Sexual solicitation of a child. 11 Del.C. §1112A
- 8.1.43 Perjury in the second degree. 11 Del.C. §1222

8.1.44 Perjury in the first degree. 11 Del.C. §1223

8.1.45 Aggravated harassment. 11 Del.C. §1312

8.1.46 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447

8.1.47 Possession of a firearm during commission of a felony. 11 Del.C. §1447A

8.1.48 Breaking and entering, etc., to place or remove equipment. 11 Del.C. §2410

8.2 Crimes substantially related to plumbing services shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Plumbing Examiners is available at: [http://www.state.de.us/research/AdminCode/title24/1800 Board of Plumbing Examiners.shtml](http://www.state.de.us/research/AdminCode/title24/1800%20Board%20of%20Plumbing%20Examiners.shtml)

DIVISION OF PROFESSIONAL REGULATION BOARD OF OPTOMETRY

Statutory Authority: 24 Delaware Code,
Section 2104(a)(1) (24 Del.C. §2104(a)(1))
24 DE Admin. Code 2100

PUBLIC NOTICE

The Delaware Board of Optometry in accordance with 24 Del.C. §2104(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of optometric services.

A public hearing will be held on December 16, 2004 at 6:45 p.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Optometry, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

2100 Board of Optometry

14.0 Crimes substantially related to the practice of optometry:

14.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of optometry in the State of Delaware without regard to the place of conviction:

14.1.1 Aggravated menacing. 11 Del.C. § 602 (b)

14.1.2 Reckless endangering in the first degree. 11 Del.C. § 604

14.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. § 605.

14.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. § 606.

14.1.5 Assault in the third degree. 11 Del. C § 611.

14.1.6 Assault in the second degree. 11 Del.C. § 612

14.1.7 Assault in the first degree. 11 Del.C. § 613.

14.1.8 Abuse of a sports official; felony. 11 Del.C. § 614.

14.1.9 Assault by abuse or neglect. 11 Del.C. § 615.

14.1.10 Terroristic threatening; felony. 11 Del.C. § 621.

14.1.11 Unlawfully administering drugs. 11 Del.C. § 625.

14.1.12 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626

14.1.13 Vehicular assault in the first degree. 11 Del.C. § 629.

14.1.14 Vehicular homicide in the second degree. 11 Del.C. § 630.

14.1.15 Vehicular homicide in the first degree. 11 Del.C. § 630A.

14.1.16 Criminally negligent homicide. 11 Del.C. § 631.

14.1.17 Manslaughter. 11 Del.C. § 632.

14.1.18 Murder by abuse or neglect in the second degree. 11 Del.C. § 633

14.1.19 Murder by abuse or neglect in the first degree. 11 Del.C. § 634.

14.1.20 Murder in the second degree; class A felony. 11 Del.C. § 635.

14.1.21 Murder in the first degree. 11 Del.C. § 636.

14.1.22 Promoting suicide. 11 Del.C. § 645.

14.1.23 Abortion. 11 Del.C. § 651.

- 14.1.24 Incest. 11 Del.C. § 766.
- 14.1.25 Unlawful sexual contact in the second degree. 11 Del.C. § 768.
- 14.1.26 Unlawful sexual contact in the first degree. 11 Del.C. § 769.
- 14.1.26 Rape in the fourth degree. 11 Del.C. § 770.
- 14.1.27 Rape in the third degree. 11 Del.C. § 771.
- 14.1.28 Rape in the second degree. 11 Del.C. § 772.
- 14.1.29 Rape in the first degree. 11 Del.C. § 773.
- 14.1.30 Sexual extortion. 11 Del.C. § 776.
- 14.1.31 Bestiality. 11 Del.C. § 777.
- 14.1.32 Continuous sexual abuse of a child. 11 Del.C. § 778.
- 14.1.33 Dangerous crime against a child. 11 Del.C. § 779.
- 14.1.34 Female genital mutilation. 11 Del.C. § 780.
- 14.1.35 Unlawful imprisonment in the first degree. 11 Del.C. § 782.
- 14.1.36 Kidnapping in the second degree. 11 Del.C. § 783.
- 14.1.37 Kidnapping in the first degree. 11 Del.C. § 783A.
- 14.1.38 Arson in the third degree. 11 Del.C. § 801.
- 14.1.39 Arson in the second degree. 11 Del.C. § 802.
- 14.1.40 Arson in the first degree. 11 Del.C. § 803.
- 14.1.41 Criminal mischief. 11 Del.C. § 811.
- 14.1.42 Burglary in the third degree. 11 Del.C. § 824.
- 14.1.43 Burglary in the second degree. 11 Del.C. § 825.
- 14.1.44 Burglary in the first degree. 11 Del.C. § 826.
- 14.1.45 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. § 828.
- 14.1.46 Robbery in the second degree. 11 Del.C. § 831.
- 14.1.47 Robbery in the first degree. 11 Del.C. § 832.
- 14.1.48 Carjacking in the second degree. 11 Del.C. § 835.
- 14.1.49 Carjacking in the first degree. 11 Del.C. § 836.
- 14.1.50 Shoplifting; felony. 11 Del.C. § 840.
- 14.1.51 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 Del.C. § 840A.
- 14.1.52 Extortion. 11 Del.C. § 846.
- 14.1.53 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices; felony. 11 Del.C. § 850.
- 14.1.54 Receiving stolen property; felony. 11 Del.C. § 851.
- 14.1.55 Identity theft. 11 Del.C. § 854.
- 14.1.56 Possession of shoplifters tools or instruments facilitating theft. 11 Del.C. § 860.
- 14.1.57 Forgery; felony; misdemeanor 11 Del.C. § 861.
- 14.1.58 Possession of forgery devices. 11 Del.C. § 862.
- 14.1.59 Falsifying business records. 11 Del.C. § 871.
- 14.1.60 Tampering with public records in the second degree 11 Del.C. § 873.
- 14.1.61 Tampering with public records in the first degree. 11 Del.C. § 876.
- 14.1.62 Offering a false instrument for filing. 11 Del.C. § 877.
- 14.1.63 Issuing a false certificate. 11 Del.C. § 878.
- 14.1.64 Issuing a bad check; felony. 11 Del.C. § 900.
- 14.1.65 Unlawful use of credit card; felony. 11 Del.C. § 903.
- 14.1.66 Reencoder and scanning devices. 11 Del.C. § 903A.
- 14.1.67 Deceptive business practices. 11 Del.C. § 906.
- 14.1.68 Criminal impersonation. 11 Del.C. § 907.
- 14.1.69 Criminal impersonation, accident related. 11 Del.C. § 907A.
- 14.1.70 Criminal impersonation of a police officer. 11 Del.C. § 907B.
- 14.1.71 Securing execution of documents by deception. 11 Del.C. § 909.
- 14.1.72 Fraudulent conveyance of public lands. 11 Del.C. § 911.
- 14.1.73 Fraudulent receipt of public lands. 11 Del.C. § 912.
- 14.1.74 Insurance fraud. 11 Del.C. § 913.
- 14.1.75 Health care fraud. 11 Del.C. § 913A.
- 14.1.76 Use of consumer identification information. 11 Del.C. § 914.
- 14.1.77 Home improvement fraud. 11 Del.C. § 916.
- 14.1.78 New home construction fraud. 11 Del.C. § 917.
- 14.1.79 Unauthorized access. 11 Del.C. § 932.
- 14.1.80 Theft of computer services. 11 Del.C. § 933.
- 14.1.81 Interruption of computer services. 11 Del.C. § 934.
- 14.1.82 Misuse of computer system information. 11 Del.C. § 935.
- 14.1.83 Destruction of computer equipment. 11

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| <u>Del.C. § 936.</u> | <u>Del.C. § 1262.</u> | |
| 14.1.84 <u>Dealing in children.</u> 11 <u>Del.C. § 1100.</u> | 14.1.114 <u>Tampering with a witness.</u> 11 <u>Del.C.</u> | |
| 14.1.85 <u>Abandonment of child.</u> 11 <u>Del.C. § 1101.</u> | <u>§ 1263.</u> | |
| 14.1.86 <u>Endangering the welfare of a child.</u> 11 | 14.1.115 <u>Interfering with child witness.</u> 11 | |
| <u>Del.C. § 1102.</u> | <u>Del.C. § 1263A.</u> | |
| 14.1.87 <u>Endangering the welfare of an</u> | 14.1.116 <u>Bribing a juror.</u> 11 <u>Del.C. § 1264.</u> | |
| <u>incompetent person.</u> 11 <u>Del.C. § 1105.</u> | 14.1.117 <u>Bribe receiving by a juror.</u> 11 <u>Del.C.</u> | |
| 14.1.88 <u>Sexual exploitation of a child.</u> 11 <u>Del.C. §</u> | <u>§ 1265.</u> | |
| <u>1108.</u> | 14.1.118 <u>Tampering with a juror.</u> 11 <u>Del.C. §</u> | |
| 14.1.89 <u>Unlawfully dealing in child pornography.</u> | 1266. | |
| 11 <u>Del.C. § 1109.</u> | 14.1.119 <u>Misconduct by a juror.</u> 11 <u>Del.C. §</u> | |
| 14.1.90 <u>Possession of child pornography.</u> 11 | 1267. | |
| <u>Del.C. § 1111.</u> | 14.1.120 <u>Tampering with physical evidence.</u> | |
| 14.1.91 <u>Sexual offenders; prohibitions from school</u> | 11 <u>Del.C. § 1269.</u> | |
| <u>zones.</u> 11 <u>Del.C. § 1112.</u> | 14.1.121 <u>Riot.</u> 11 <u>Del.C. § 1302.</u> | |
| 14.1.92 <u>Sexual solicitation of a child.</u> 11 <u>Del.C. §</u> | 14.1.122 <u>Hate crimes; misdemeanor; felony.</u> 11 | |
| <u>1112A</u> | <u>Del.C. § 1304.</u> | |
| 14.1.93 <u>Bribery.</u> 11 <u>Del.C. § 1201</u> | 14.1.123 <u>Aggravated harassment.</u> 11 <u>Del.C. §</u> | |
| 14.1.94 <u>Receiving a bribe; class E felony.</u> 11 | 1312. | |
| <u>Del.C. § 1203.</u> | 14.1.124 <u>Stalking.</u> 11 <u>Del.C. § 1312A.</u> | |
| 14.1.95 <u>Improper influence.</u> 11 <u>Del.C. § 1207.</u> | 14.1.125 <u>Cruelty to animals; felony.</u> 11 <u>Del.C.</u> | |
| 14.1.96 <u>Official misconduct.</u> 11 <u>Del.C. § 1211.</u> | <u>§ 1325.</u> | |
| 14.1.97 <u>Perjury in the second degree.</u> 11 <u>Del.C. §</u> | 14.1.126 <u>Animals; fighting and baiting</u> | |
| <u>1222.</u> | <u>prohibited; felony.</u> 11 <u>Del.C. § 1326.</u> | |
| 14.1.98 <u>Perjury in the first degree.</u> 11 <u>Del.C. §</u> | 14.1.127 <u>Maintaining a dangerous animal;</u> | |
| <u>1223.</u> | <u>felony.</u> 11 <u>Del.C. § 1327.</u> | |
| 14.1.99 <u>Making a false written statement.</u> 11 | 14.1.128 <u>Abusing a corpse.</u> 11 <u>Del.C. § 1332.</u> | |
| <u>Del.C. § 1233.</u> | 14.1.129 <u>Trading in human remains and</u> | |
| 14.1.100 <u>Wearing a disguise during the</u> | <u>associated funerary objects.</u> 11 <u>Del.C. § 1333.</u> | |
| <u>commission of a felony.</u> 11 <u>Del.C. § 239.</u> | 14.1.129 <u>Violation of privacy; misdemeanor;</u> | |
| 14.1.101 <u>Terroristic threatening of public</u> | <u>felony.</u> 11 <u>Del.C. § 1335.</u> | |
| <u>officials or public servants.</u> 11 <u>Del.C. § 1240.</u> | 14.1.130 <u>Bombs, incendiary devices, Molotov</u> | |
| 14.1.102 <u>Hindering prosecution.</u> 11 <u>Del.C. §</u> | <u>cocktails and explosive devices.</u> 11 <u>Del.C. § 1338.</u> | |
| <u>1244.</u> | 14.1.131 <u>Adulteration.</u> 11 <u>Del.C. § 1339.</u> | |
| 14.1.103 <u>Falsely reporting an incident.</u> 11 | 14.1.132 <u>Prostitution.</u> 11 <u>Del.C. § 1342.</u> | |
| <u>Del.C. § 1245.</u> | 14.1.133 <u>Patronizing a prostitute prohibited.</u> 11 | |
| 14.1.104 <u>Abetting the violation of driver's</u> | <u>Del.C. § 1343.</u> | |
| <u>license restrictions.</u> 11 <u>Del.C. § 1249.</u> | 14.1.134 <u>Promoting prostitution in the third</u> | |
| 14.1.105 <u>Offenses against law-enforcement</u> | <u>degree.</u> 11 <u>Del.C. § 1351.</u> | |
| <u>animals. Felony</u> 11 <u>Del.C. § 1250.</u> | 14.1.135 <u>Promoting prostitution in the second</u> | |
| 14.1.106 <u>Escape in the second degree.</u> 11 | <u>degree.</u> 11 <u>Del.C. § 1352.</u> | |
| <u>Del.C. § 1252.</u> | 14.1.136 <u>Promoting prostitution in the first</u> | |
| 14.1.107 <u>Escape after conviction.</u> 11 <u>Del.C. §</u> | <u>degree.</u> 11 <u>Del.C. § 1353.</u> | |
| <u>1253.</u> | 14.1.137 <u>Permitting prostitution.</u> 11 <u>Del.C. §</u> | |
| 14.1.108 <u>Assault in a detention facility.</u> 11 | 1355. | |
| <u>Del.C. § 1254.</u> | 14.1.138 <u>Carrying a concealed deadly weapon.</u> | |
| 14.1.109 <u>Promoting prison contraband; felony;</u> | 11 <u>Del.C. § 1442.</u> | |
| <u>misdemeanor.</u> 11 <u>Del.C. § 1256.</u> | 14.1.139 <u>Carrying a concealed dangerous</u> | |
| 14.1.110 <u>Use of an animal to avoid capture;</u> | <u>instrument.</u> 11 <u>Del.C. § 1443.</u> | |
| <u>felony</u> 11 <u>Del.C. § 1257A.</u> | 14.1.140 <u>Possessing a destructive weapon.</u> 11 | |
| 14.1.111 <u>Misuse of prisoner mail; felony.</u> 11 | <u>Del.C. § 1444.</u> | |
| <u>Del.C. § 1260.</u> | 14.1.141 <u>Unlawfully dealing with a dangerous</u> | |
| 14.1.112 <u>Bribing a witness.</u> 11 <u>Del.C. § 1261.</u> | <u>weapon.</u> 11 <u>Del.C. § 1445.</u> | |
| 14.1.113 <u>Bribe receiving by a witness.</u> 11 | 14.1.142 <u>Possession of a deadly weapon during</u> | |

commission of a felony. 11 **Del.C.** § 1447.

14.1.143 Possession of a firearm during commission of a felony. 11 **Del.C.** § 1447A.

14.1.144 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** § 1448.

14.1.145 Criminal history record checks for sales of firearms; felony. 11 **Del.C.** § 1448A.

14.1.146 Wearing body armor during commission of felony. 11 **Del.C.** §1449.

14.1.147 Receiving a stolen firearm. 11 **Del.C.** § 1450.

14.1.148 Theft of a firearm. 11 **Del.C.** § 1451.

14.1.149 Giving a firearm to person prohibited. 11 **Del.C.** § 1454.

14.1.150 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** § 1455.

14.1.151 Unlawfully permitting a minor access to a firearm. 11 **Del.C.** § 1456.

14.1.152 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** § 1457.

14.1.153 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** § 1458.

14.1.154 Possession of a weapon with a removed, obliterated or altered serial number. 11 **Del.C.** § 1459.

14.1.155 Prohibited acts, cheating devices(a)-(e), second or subsequent offense. 11 **Del.C.** § 1471.

14.1.156 Organized Crime and Racketeering. 11 **Del.C.** § 1504.

14.1.157 Victim or Witness Intimidation 11 **Del.C.** § 3532 & 3533.

14.1.158 Abuse, neglect, mistreatment or financial exploitation of residents or patients 16 **Del.C.** § 1136(a), (b) and (c).

14.1.159 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** § 4751(a), (b) and (c).

14.1.160 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** § 4752(a) and (b).

14.1.161 Unlawful delivery of noncontrolled substance. 16 **Del.C.** § 4752A.

14.1.162 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** § 4753A (a)(1)-(9).

14.1.163 Possession and delivery of noncontrolled prescription drug. 16 **Del.C.** § 4754A.

14.1.164 Prohibited acts E under the Uniform Controlled Substances Act. 16 **Del.C.** § 4755.(a)(1) and (2)

14.1.165 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** § 4756(a)(1)-(5) and (b).

14.1.166 Hypodermic syringe or needle; delivering or possessing; disposal; 16 **Del.C.** § 4757.

14.1.167 Keeping drugs in original containers. 16 **Del.C.** § 4758.

14.1.168 Distribution to persons under 21 years of age. 16 **Del.C.** § 4761.

14.1.169 Purchase of drugs from minors. 16 **Del.C.** § 4761A

14.1.170 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** § 4767

14.1.171 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** § 4768

14.1.172 Drug paraphernalia. 16 **Del.C.** § 4771 (a) and (b).

14.1.173 Possession, manufacture and sale, delivery to a minor and advertising of drug paraphernalia. 16 **Del.C.** § 4774(a),(b),(c)(d)

14.1.174 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 **Del.C.** § 2302(a) and § 2305 (3) and (4).

14.1.175 Attempt to evade or defeat tax. 30 **Del.C.** § 571.

14.1.176 Failure to collect or pay over tax. 30 **Del.C.** § 572.

14.1.177 Failure to file return, supply information or pay tax. 30 **Del.C.** § 573.

14.1.178 Fraud and false statements. 30 **Del.C.** § 574.

14.1.179 Obtaining benefit under false representation. 31 **Del.C.** § 1003.

14.1.180 Reports, statements and documents. 31 **Del.C.** § 1004(1), (2), (3), (4), (5)

14.1.181 Kickback schemes and solicitations. 31 **Del.C.** § 1005.

14.1.182 Conversion of payment. 31 **Del.C.** § 1006.

14.1.183 Unlawful possession or manufacture of proof of insurance. 21 **Del.C.** § 2118A.

14.1.184 Temporary registration violations related to providing false information. 21 **Del.C.** § 2133(a) (1)-(3).

14.1.185 False statements. 21 **Del.C.** § 2315.

14.1.186 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 **Del.C.** § 2316.

14.1.187 False statements; incorrect or incomplete information. 21 **Del.C.** § 2620.

14.1.188 License to operate a motorcycle, motorbike, etc. 21 **Del.C.** § 2703.

- 14.1.189 Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age. 21 **Del.C.** § 2710.
- 14.1.190 Unlawful application for or use of license or identification card. 21 **Del.C.** § 2751.
- 14.1.191 False statements. 21 **Del.C.** § 2752.
- 14.1.192 Driving vehicle while license is suspended or revoked. 21 **Del.C.** § 2756.
- 14.1.193 Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards. 21 **Del.C.** § 2760(a) and (b).
- 14.1.194 Driving after judgment prohibited. 21 **Del.C.** § 2810.
- 14.1.195 False statements. 21 **Del.C.** § 3107.
- 14.1.196 Driving a vehicle while under the influence or with a prohibited alcohol content. 21 **Del.C.** § 4177 (3) and (4).
- 14.1.197 Duty of driver involved in accident resulting in injury or death to any person. 21 **Del.C.** § 4202.
- 14.1.198 Duty to report accidents; evidence. 21 **Del.C.** § 4203.
- 14.1.199 Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires. 21 **Del.C.** § 4604(a).
- 14.1.200 Tampering with vehicle. 21 **Del.C.** § 6703.
- 14.1.201 Receiving or transferring stolen vehicle. 21 **Del.C.** § 6704.
- 14.1.202 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity. 21 **Del.C.** § 6705(a)-(e).
- 14.1.203 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 **Del.C.** § 6708(a) and (b).
- 14.1.204 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers. 21 **Del.C.** § 6709(a).
- 14.1.205 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers. 21 **Del.C.** § 6710(a).
- 14.1.206 Offenses [involving meat and poultry inspection including bribery or attempted bribery or assaulting or impeding any person in the performance of his duties] (felony) 3 **Del.C.** § 871
- 14.1.207 Fraudulent Written Statements 3 **Del.C.** § 10049
- 14.1.208 Fraudulent Certificate of Registration or Eligibility Documents 3 **Del.C.** § 10050
- 14.1.209 Prohibited trade practices against infirm or elderly] 6 **Del.C.** § 2581
- 14.1.210 Auto Repair Fraud victimizing the infirm or elderly 6 **Del.C.** § 4909A
- 14.1.211 Possession or use of false weights. 6 **Del.C.** § 5134
- 14.1.212 Violations of the Securities Act 6 **Del.C.** § 7322
- 14.1.213 Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C.** § 1717
- 14.1.214 Interception of Communications Generally; Divulging Contents of Communications 11 **Del.C.** § 2402
- 14.1.215 Manufacture, Possession or Sale of Intercepting Device. 11 **Del.C.** § 2403
- 14.1.216 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** § 2410
- 14.1.217 Obstruction, Impediment or Prevention of Interception. 11 **Del.C.** § 2412
- 14.1.218 Obtaining, Altering or Preventing Authorized Access. 11 **Del.C.** § 2421
- 14.1.219 Divulging Contents of Communications. 11 **Del.C.** § 2422
- 14.1.220 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.** § 2431
- 14.1.221 Aggravated Act of Intimidation. 11 **Del.C.** § 3533
- 14.1.223 Attempt to Intimidate. 11 **Del.C.** § 3534
- 14.1.224 Disclosure of Expunged Records. 11 **Del.C.** § 4374
- 14.1.225 Violation of reporting provisions re: SBI. 11 **Del.C.** § 8523
- 14.1.226 Failure of child-care provider to obtain information required under § 8561 or for those providing false information. 11 **Del.C.** § 8562
- 14.1.227 Providing false information when seeking employment in a public school. 11 **Del.C.** § 8572
- 14.1.228 Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C.** § 9016
- 14.1.229 Alteration, Theft or Destruction of Will. 12 **Del.C.** § 210
- 14.1.230 Violation of reporting requirements involving abuse under § 903. 16 **Del.C.** § 914
- 14.1.231 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized. 16 **Del.C.** § 2513(a) and (b).
- 14.1.232 Violations related to the sale, purchase, receipt, possession, transportation, use, safety and control of explosive materials other than 16 **Del.C.** § 7103, 16 **Del.C.** § 7112
- 14.1.233 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs 23 **Del.C.** § 2302 (3) and (4)
- 14.1.234 License Requirements. 24 **Del.C.** § 901
- 14.1.235 Sale to Persons under 21 or

Intoxicated Persons. 24 **Del.C.** §903

14.1.236 Failure to make Reports of Persons who are Subject to Loss of Consciousness 24 **Del.C.** § 1763

14.1.237 [Interference] Relating to the Blind and "Seeing Eye Dogs" 31 **Del.C.** § 2117

14.1.238 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** § 3913(a), (b) and (c).

14.2 Crimes substantially related to the practice of optometry shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note:** As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Optometry is available at: <http://www.state.de.us/research/AdminCode/title24/2100 Board of Optometry.shtml>

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE**

Statutory Authority: 24 Delaware Code,
Section 3306(a) (24 **Del.C.** §3306(a))
24 **DE Admin. Code** 3300

PUBLIC NOTICE

The Delaware Board of Veterinary Medicine in accordance with 24 **Del.C.** §3306(a) has proposed changes to its rules and regulations as mandated by SB 229. The proposed regulations have identified crimes that are substantially related to the provision of veterinary medicine.

A public hearing will be held at 1:00 PM on December 14, 2004 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Veterinary Medicine, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

3300 Board of Veterinary Medicine

11.0 Crimes substantially related to the provision of Veterinary Medicine

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Veterinary Medicine in the State of Delaware without regard to the place of conviction:

11.1.1 Reckless endangering in the first degree. 11 **Del.C.** §604

11.1.2. Abuse of a pregnant female in the second degree. 11 **Del.C.** §605

11.1.3 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606

11.1.4 Assault in the second degree. 11 **Del.C.** §612

11.1.5 Assault in the first degree. 11 **Del.C.** §613

11.1.6 Terroristic threatening. 11 **Del.C.** §621

Felony
11.1.7 Unlawfully administering drugs. 11 **Del.C.** §625

11.1.8 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 **Del.C.** §626

11.1.9 Murder by abuse or neglect in the second degree. 11 **Del.C.** §633

11.1.10 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634

11.1.11 Murder in the second degree. 11 **Del.C.** §635

11.1.12 Murder in the first degree. 11 **Del.C.** §636

11.1.13 Incest. 11 **Del.C.** §766

11.1.14 Unlawful sexual contact in the first degree. 11 **Del.C.** §769

11.1.15 Rape in the fourth degree. 11 **Del.C.** §770

11.1.16 Rape in the third degree. 11 **Del.C.** §771

11.1.17 Rape in the second degree. 11 **Del.C.** §772

11.1.18 Rape in the first degree. 11 **Del.C.** §773

11.1.19 Sexual extortion. 11 **Del.C.** §776

11.1.20 Bestiality. 11 **Del.C.** §777

11.1.21 Continuous sexual abuse of a child. 11 **Del.C.** §778

11.1.22 Dangerous crime against a child. 11 **Del.C.** §779

11.1.23 Female genital mutilation. 11 **Del.C.** §780

11.1.24 Unlawful imprisonment in the first degree. 11 **Del.C.** §782

11.1.25 Kidnapping in the second degree. 11 **Del.C.** §783

11.1.26 Kidnapping in the first degree. 11 **Del.C.** §783A

11.1.27 Dealing in children. 11 Del.C. §1100
11.1.28 Endangering the welfare of a child. 11 Del.C. §1102
11.1.29 Sexual exploitation of a child. 11 Del.C. §1108
11.1.30 Unlawfully dealing in child pornography. 11 Del.C. §1109
11.1.31 Possession of child pornography. 11 Del.C. §1111
11.1.32 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112
11.1.33 Sexual solicitation of a child. 11 Del.C. §1112A
11.1.34 Obstructing the control and suppression of rabies. 11 Del.C. §1248
11.1.35 Offenses against law-enforcement animals. 11 Del.C. §1250
11.1.36 Use of an animal to avoid capture. 11 Del.C. §1257A (Felony)
11.1.37 Hate crimes. 11 Del.C. §1304 (Felony)
11.1.38 Cruelty to animals. 11 Del.C. §1325
11.1.39 The unlawful trade in dog or cat by-products. 11 Del.C. §1325A
11.1.40 Animals; fighting and baiting prohibited. 11 Del.C. §1326
11.1.41 Maintaining a dangerous animal. 11 Del.C. §1327
11.1.42 Abusing a corpse. 11 Del.C. §1332
11.1.43 Promoting prostitution in the second degree. 11 Del.C. §1352
11.1.44 Promoting prostitution in the first degree. 11 Del.C. §1353
11.1.45 Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457 (Felony)
11.1.46 Violations. 16 Del.C. §1136
11.1.47 Prohibited acts A; penalties. 16 Del.C. §4751
11.1.48 Prohibited acts B; penalties. 16 Del.C. §4752
11.1.49 Unlawful delivery of noncontrolled substance. 16 Del.C. §4752A
11.1.50 Prohibited acts C; penalties. 16 Del.C. §4753
11.1.51 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3, 4 methylenedioxymethamphetamine (MDMA). 16 Del.C. §4753A
11.1.52 Prohibited acts D; penalties. 16 Del.C. §4754
11.1.53 Possession and delivery of noncontrolled prescription drug. 16 Del.C. §4754A
11.1.54 Distribution to persons under 21 years of age; penalties. 16 Del.C. §4761

11.1.55 Purchase of drugs for minors; penalties. 16 Del.C. §4761A

11.1.56 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. §4767

11.1.57 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 Del.C. §4768

11.1.58 Unauthorized Acts against a Service Guide or Seeing Eye Dog (class D felony). 7 Del.C. §1717

11.2 Crimes substantially related to the practice of Veterinary Medicine shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Veterinary Medicine is available at: <http://www.state.de.us/research/AdminCode/title24/3300> Board of Veterinary Medicine.shtml**

PUBLIC SERVICE COMMISSION

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

ORDER NO. 6486

PSC REGULATION DOCKET NO. 54

AND NOW, this 5th day of October, 2004;

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

WHEREAS, under 74 *Delaware Laws, Chapter 317*, any person or entity in the business of a Wastewater Utility as of June 7, 2004, and subject to the supervision and regulation of the Commission under the new legislation, is required to file with the Commission a schedule of its rates in effect as of June 7, 2004 within 120 days of enactment of the new legislation in such form as the Commission may require; and

WHEREAS, under the new legislation the rates of Wastewater Utilities are deemed in effect on a temporary

basis and applications for initial rate changes must be filed with the Commission within 180 days of enactment of the legislation; and

WHEREAS, in preparation for the implementation of this new jurisdiction over Wastewater Utilities, the Commission deems it appropriate, advisable, and in the public interest to promulgate regulations intended to govern certain practices and procedures before the Commission relating to such Wastewater Utilities; and

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

IT IS SO ORDERED:

1. Pursuant to 26 **Del.C.** §209(a), and 29 **Del.C.** §§10111 *et seq.*, the Commission promulgates proposed Regulations Governing Wastewater Utilities Subject to the Jurisdiction of the Public Service Commission ("Regulations").

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

3. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before Tuesday, October 12, 2004.

4. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all Wastewater Utilities currently operating under a CPCN in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. William F. O'Brien is designated the Hearing Examiner for this matter pursuant to 26 **Del.C.** §502 and 29 **Del.C.** Ch. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. Hearing Examiner O'Brien is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later submitted proposed regulations or amendments thereto. Francis J. Murphy, Esquire, is designated Staff Counsel for this matter. The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

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

BY ORDER OF THE COMMISSION:

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

ATTEST: Karen J. Nickerson, Secretary

EXHIBIT "A"

**IN THE MATTER OF THE ADOPTION OF
REGULATIONS CONCERNING THE
IMPLEMENTATION
OF 74 DELAWARE LAWS, CHAPTER 317 (2004)
GRANTING THE DELAWARE PUBLIC
SERVICE COMMISSION THE JURISDICTION
TO REGULATE WASTEWATER UTILITIES,
INCLUDING THE JURISDICTION TO GRANT
AND REVOKE CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY FOR
WASTEWATER UTILITIES
(OPENED OCTOBER 5, 2004)**

**PSC REGULATIONS DOCKET NO. 54
PUBLIC NOTICE**

The Delaware General Assembly has enacted legislation which granted the Delaware Public Service Commission (the "Commission") jurisdiction over wastewater utilities serving fifty or more customers in the aggregate. The legislation also made applications by such wastewater utilities for a Certificate of Public Convenience and Necessity ("CPCN") subject to the jurisdiction of the Commission. The new law is found at 74 **Delaware Laws**, Ch. 317. In the past, wastewater utilities filed applications for CPCNs with the Department of Natural Resources and Environmental Control ("DNREC"). The new legislation became effective on July 6, 2004.

In connection with the exercise of jurisdiction over wastewater utilities, the Commission is promulgating proposed new regulations to govern wastewater utilities. The first regulation contains definitions of terms used in the regulations. The second addresses the scope of the regulations themselves, which are intended to govern certain practices and procedures before the Commission relating to wastewater utilities.

Two regulations set forth requirements for an application for a CPCN, including requirements for a new wastewater utility that has never before been awarded a CPCN. A related regulation addresses the review, by the Commission's Staff, of a new CPCN application for compliance with statutes, applicable Rules of the Commission, and the regulations. A second related regulation requires the Commission Staff to cooperate with

DNREC, the Department of Public Health, and other interested state, local and federal authorities, when an application for a CPCN is under review.

Two of the regulations address the notice to be given landowners in the proposed service territory covered by a wastewater utility's CPCN application, and the time limits within which affected landowners must object to the CPCN, and/or request a public hearing. One of the regulations governing notice contains a proposed statement to the landowners that would have to be included in the notice sent by a wastewater utility applying for a CPCN.

One of the new regulations is designed to govern proceedings to suspend or revoke a CPCN, and identifies the factors that must be present for the Commission to make a finding of good cause to suspend or revoke a CPCN. The same regulation confirms that such proceedings before the Commission must be conducted in accordance with applicable provisions of the Delaware Administrative Procedures Act, *29 Del. C. Ch. 101, Subchapter III*.

The final regulation relates to municipalities, government agencies, and wastewater authorities and districts that engage in or desire to engage in the business of a wastewater utility.

The Commission has authority to promulgate the regulations pursuant to *26 Del.C. § 209 (a)*, *29 Del.C. § 10111 et seq.*, and *74 Delaware Laws, Ch. 317*.

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before November 30, 2004.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before November 30, 2004.

In addition, the Commission will conduct at least one public hearing concerning the proposed regulations on December 8, 2004, beginning at 10:00 AM. The hearing will continue on December 9, 2004 at 10:00 AM, if necessary. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment during normal business hours, at the office of the Division of the Public Advocate located at the Carvel State Office

Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to knickerson@state.de.us.

EXHIBIT "B"

REGULATIONS CONCERNING THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES

1.0 Definitions

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

"Commission" means the Delaware Public Service Commission.

"CPCN" means a Certificate of Public Convenience and Necessity.

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"DPA" means the Division of the Public Advocate.

"DPH" means the Division of Public Health of the Delaware Department of Health and Social Services

"Staff" means the Staff of the Delaware Public Service Commission.

"Secretary" means the Secretary of the Delaware Public Service Commission.

2.0 Scope and Authority

2.1 This regulation governs the process by which non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN to provide wastewater services. This regulation also contains procedures for municipalities, governmental agencies, and wastewater authorities and districts, to notify the Commission of its service territory and planned service extensions.

2.2 Authority for these regulations is granted by 26 Del.C. §203D.

2.3 Proceedings before the Commission for wastewater

utilities shall be conducted in accordance with the procedures set forth in 29 *Del.C. Ch. 101, Subchapter III*, including any proceedings where the Commission finds that an applicant is unwilling or unable to provide safe, adequate, and reliable wastewater service to existing customers, or is currently subject to such a Commission finding under 26 *Del.C. §203D(e)*.

3.0 Application for a Certificate of Public Convenience and Necessity

3.1 An application for a CPCN to begin the business of a wastewater utility, or to extend or expand the business or operations of an existing wastewater utility, shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, and these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

3.1.1 Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and include citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application.

3.1.2 A statement identifying any significant element of the application that, to the applicant's knowledge, represents a departure from prior decisions of the Commission.

3.1.3 State the name, address, telephone number, and e-mail address (if any) of the individual to be notified if Staff determines there are deficiencies in the application.

3.1.4 For applications submitted under 26 *Del.C. §203D(d)(2)*, contain the supporting documentation required by 26 *Del.C. §203D*, that all landowners of the proposed territory have been notified of the application by certified mail.

3.1.5 A complete list of county tax map parcel number(s), and the corresponding names and mailing addresses of the property owners, for the area covered by the application.

3.1.6 Copies of the tax map or maps with the proposed service territory clearly marked.

3.1.7 A check made out to the Delaware Public Service Commission as specified in Title 26.

3.2 If an application for a CPCN involves a wastewater utility project or service that requires the review, approval or authorization of any other state, local or federal regulatory body, including DNREC, the application to the Commission shall so state, and include the following:

3.2.1 A statement of the current status of such application or applications.

3.2.2 If a determination has been made with

respect to such application by the other regulatory body or bodies, the applicant shall include a copy of any permit, order, certificate, or other document issued by the regulatory body; and,

3.2.3 If a determination is made by the other regulatory body or bodies with respect to such application after the filing of the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document issued by the regulatory body or bodies shall be filed with the Commission within six working days of receipt.

3.3 If not presently on file with the Commission, an applicant for a CPCN shall provide the following with the CPCN application:

3.3.1 A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;

3.3.2 A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, and a chart or charts that depict the inter-company relationships;

3.3.3 A map or maps identifying all areas, including towns, cities, counties, or other government subdivisions to which service is currently provided;

3.3.4 Annual reports to stockholders for the applicant, its subsidiaries, and its parent for the last two years;

3.3.5 The applicant's audited financial statements, 10K's, and all proxy material for the last two years;

3.3.6 Any report or document submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceeding where an issue has been raised regarding the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable wastewater services to its existing customers; and

3.3.7 Evidence of comprehensive general liability insurance.

3.3.8 Supporting documentation not filed with the application shall be made available upon request for Staff review

3.4 An applicant for a CPCN that proposes to extend services into the service territory of a municipality, government agency or wastewater authority or district must submit written documentation that such entity has been informed of and has approved such an expansion by the applicant.

3.5 During the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration and pertaining to the financial viability of the applicant.

3.6 An applicant for a CPCN shall submit one original

and 10 copies of the application and shall include three copies of applicable maps.

4.0 Additional Requirements for a CPCN Application Filed by a New Wastewater Utility

4.1 Except for municipalities, governmental agencies and wastewater authorities and districts, and wastewater utilities serving or to serve fewer than 50 customers in the aggregate, any new wastewater utility that has not previously been awarded a CPCN in Delaware and that will begin operations or connect its 50th customer after June 7, 2004, must submit the following information with its CPCN application:

4.1.1 Evidence that it possesses the financial, operational, and managerial capacity to comply with all federal, state and local wastewater requirements, by maintaining capacity sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;

4.1.2 A certified copy of the applicant's certificate of incorporation or business license if not presently on file with the Commission;

4.1.3 Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and

4.1.4 A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.

4.2 Any existing wastewater utility that did not obtain a CPCN from the Commission by December 3, 2004 as required by 26 Del.C. §203D(a)(2), must comply with the requirements set forth in Section 4.1 of these rules.

5.0 Review of Application; Deficiencies in the Application

5.1 The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and promptly notify the applicant of the alleged deficiencies.

5.2 The applicant shall have thirty days from the date of the receipt of the notice of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.

5.3 Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 Del.C. §203D(g)(1). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the

utility's application for non-compliance with these regulations.

5.4 Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice. Such informal review and comment shall not be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

6.0 Filing of Application with DNREC and DPH; Coordination and Cooperation

6.1 An applicant for a CPCN shall file an identical copy of the application and its supporting documentation with DNREC and DPH within three days of filing the same with the Commission.

6.2 Staff shall send a written request to DNREC and DPH soliciting written comment as to whether it is aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable wastewater services to existing customers.

6.3 Staff shall coordinate and cooperate with DNREC and DPH during the process of reviewing an application for a CPCN. Staff shall also coordinate and cooperate with the DPA and other interested state, local, and federal authorities.

7.0 Provision of Notice to all Landowners, Governing County and Adjacent Towns and/or Cities of the Proposed Territory

7.1 Pursuant to the provisions of 26 Del.C. §203D(d)(2), prior to filing the application with the Commission, the applicant shall provide written notice of the anticipated filing of the application to all landowners of the proposed territory.

7.2 Such written notice shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application, and must include, at a minimum, the following statement:

"Pursuant to 26 Delaware Code, Section 203D(d)(2), an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public wastewater and we are required to inform you of certain information. The area to be served is {provide a shorthand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required. Inclusion of your property in a CPCN area does not obligate you to connect immediately to our system; however, should

your existing system fail and public wastewater services are deemed to be legally and publicly available, you may then be required to connect.”

“Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} if a majority of the landowners in the proposed wastewater service area object to the issuance of the CPCN. If you object to the issuance of a CPCN for the proposed area that includes your property, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.”

“You may also request a public hearing on this matter. The purpose of the public hearing will be to demonstrate why it would not be in the public interest for the Commission to grant {enter name of your organization} a CPCN to provide wastewater services to the proposed area. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.”

“Written notice of your decision to object to the issuance of the CPCN or your written request for a public hearing, should be sent to the Secretary of the Delaware Public Service Commission at the address shown below. Any written notice sent to the Commission must include the description of the service area referred to above, your tax parcel identification number, and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.”

Secretary
Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite100
Dover, Delaware 19904

“Questions regarding objections or public hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}.”

8.0 Landowners Who Object or Request a Public Hearing; Time Limits; Extension of Time

8.1 In proceedings involving an application submitted under 26 Del.C. §203D(d)(2), any landowner whose property, or any part thereof, is located within the proposed territory to be served may object to the issuance of the CPCN

or request a public hearing. The applicant shall inform the Commission of the name and address of any landowner who notifies the applicant of their objection to the issuance of the CPCN or who requests a public hearing. Any written notice received from a landowner shall be filed with the Commission.

8.2 The Commission shall maintain records identifying any landowner who has provided written notice of their objection to the issuance of the CPCN or who has requested a public hearing. Such records shall be made available to the applicant.

8.3 Written notice from a landowner either objecting to the issuance of the CPCN or requesting a public hearing must be filed with the Commission within sixty days from the date of the landowner's receipt of a written notice from the wastewater utility that complies with Section 7.0 of these rules, or within thirty days of the filing of the completed application, whichever period is greater.

8.4 The Commission may, in the exercise of its discretion, extend the time to object or to request a public hearing even though the period in which to do so has expired.

9.0 Suspension or Revocation of CPCN for Good Cause

9.1 Pursuant to the provisions of 26 Del.C. § 203D(j), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

9.1.1 A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Titles 7, 16 or 26 dealing with the provision of wastewater services to customers, or any order or rule of the Commission relating to the same; or,

9.1.2 A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or inadequate operation of, the system or otherwise; and,

9.1.3 A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and,

9.1.4 A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated. (74 Del. Laws, Ch. 317, §6.)

9.2 In addition to the factors described in Section 9.1 above, the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

9.2.1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the wastewater utility; or

9.2.2 Criminal conduct on the part of the wastewater utility; or

9.2.3 Actual, threatened or impending insolvency of the wastewater utility; or

9.2.4 Persistent, serious, substantial violations of statutes or regulations governing the wastewater utility in addition to any finding of non-compliance required by Section 9.1.1 above; or

9.2.5 Failure or inability on the part of the wastewater utility to comply with an order of any other federal, state or local regulatory body after the wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

9.2.6 Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

9.3 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapter III.

9.4 The Commission will not suspend or revoke a CPCN for good cause without first affording the wastewater utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN, unless the Commission finds that the conduct of a wastewater utility poses an imminent threat to the health and safety of its customers, to the general public or to the environment.

10.0 Abandonment, Sale of Utility, and Transfer of CPCN

10.1 A utility seeking to abandon service, sell, or transfer a CPCN shall file an application with the Commission and must receive Commission approval prior to such abandonment, sale, or transfer.

10.2 Any entity acquiring a CPCN from the divesting utility must submit a CPCN application and receive Commission approval as specified in these regulations.

11.0 Municipalities, Governmental Agencies, and Wastewater Authorities and Districts

11.1 As provided for in 26 Del.C. §203D(b), municipalities, governmental agencies, and wastewater authorities and districts engaging in or desiring to engage in the business of a wastewater utility are not required to obtain a CPCN from the Commission for any existing or new service territory, or expansion of an existing territory.

11.2 These entities shall provide to the Commission a description of any existing service territory for wastewater service no later than October 4, 2004, and shall promptly give notice and a description of any extension of wastewater territory or new wastewater service territory to the Commission.

11.3 A municipality, governmental agency or wastewater authority or districts shall not extend service in areas where the Commission has granted a CPCN to another wastewater utility without receiving the approval of the Commission.

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10103 (3 Del.C. §10103)

PUBLIC NOTICE

The Thoroughbred Racing Commission proposes to enact a new Rule, Rule 11.14.6, to provide for a recommended \$1,000 fine for owners or trainers who scratch their horses in Delaware in order to race in another jurisdiction. The Commission also proposes to amend Rule 19.3.2 to raise the appeal bond from \$250 to \$400 to cover increased costs associated with court reporter fees. The Commission will hold a public hearing on these proposed changes on January 11, 2005 at 10:15 a.m. at the Delaware Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. The Commission will accept written comments on the proposed rules until January 10, 2005. Written comments should be sent to John Wayne, Administrator of Racing.

Proposed Rule Amendments of the Delaware Thoroughbred Racing Commission

11.0 Entries, Subscriptions, Delegations

11.1 Entering Required:

11.1.1 No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the Licensee without notice or reason given therefor.

11.2 Procedure for Making Entries:

11.2.1 It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.

11.2.2 All entries, subscriptions, declarations and scratches shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.

11.2.3 Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and

made by the Owner, Trainer or a person deputized by such Owner or Trainer.

11.2.4 Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.

11.2.5 Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's registration certificate.

11.2.6 No horse may race unless correctly identified to the satisfaction of the Stewards as being the horse duly entered;

11.2.7 In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.

11.2.8 At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.

11.2.9 Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.

11.2.10 In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.

11.2.11 No alteration may be made in any entry after the closing of entries, except that an error may be corrected.

11.2.12 No horse may be entered in two races to be run on the same day.

11.3 Limitation as to Spouses:

Repealed 1/6/92.

11.4 Mutuel Entries:

11.4.1 All horses entered in the same race and owned wholly or in part by the same owner or spouse thereof shall be joined as a mutuel entry and a single betting interest. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, has an ownership interest in another horse, either as an individual or as a licensed shareholder of a partnership or as a licensed shareholder of a corporation. No trainer of any horse shall have any ownership interest in any other horse in the same race unless such horses are coupled as a single wagering interest.

11.4.2 No owner shall have more than one horse

start in a trifecta or twin-trifecta race. No mutuel entry shall start in a trifecta or twin-trifecta race. However, the Stewards may, in their discretion, permit mutuel entries to start in stakes races and simulcast races when there is trifecta wagering.

11.4.3 Except with the permission of the Stewards, no more than two horses having such common ties through ownership as to require them to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one of the horses may be made.

11.4.4 In no case may two horses having common ties through ownership start in a purse race to the exclusion of a single interest.

Revised: 6/19/92

11.5 Subscriptions:

11.5.1 Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.

11.5.1.1 Joint subscription and entries may be made by any one of the joint Owners of a horse and each such Owner shall be jointly and severally liable for all payments due thereon.

11.5.1.2 Death of a horse or a mistake in its entry, when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded.

11.5.1.3 Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry or right of entry thereunder; all rights, privileges and obligations shall attach to the successor Owner, including the legal representatives of the decedent.

11.5.1.4 When a horse is sold privately, sold at public auction or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new Owner, except that if such horse is transferred to a person whose registration is suspended or otherwise unqualified to race or enter such horse, then subscriptions shall be void as of the date of such transfer.

Rule 11.4 Rev. July 1977

Rule 11.4 Rev. July 1978

11.5.1.5 All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the conditions for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

11.6 Closings:

11.6.1 Entries for purse races and subscriptions to stakes races shall close at the time designated by the Licensee in the previously published conditions for such races. If a race is not split, no entry, subscription or declaration shall be accepted after such closing time, except that in the event of an emergency or if a purse race fails to

fill, then the Racing Secretary may, with the approval of a Steward, extend such closing time.

11.6.2 If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing, provided they are received in time for compliance with every other condition of such race.

11.6.3 Entries which have closed shall be compiled without delay by the Racing Secretary and, along with declarations, be posted.

11.7 Number of Starters in a Race:

11.7.1 The maximum number of starters in any race shall be limited to the number of starting positions afforded by the Licensee's starting gate and such extensions thereof as can be positioned across the width of the track at the starting point for such race. Such maximum number of starters shall be further limited by the number of horses which, in the opinion of the Stewards, considering the safety of the horses and riders and the distance from the start of the first turn, can be afforded a fair and equal start.

11.7.2 If any purse race in the printed condition book fails to fill, then the Licensee may cancel or declare off such race.

11.8 Split or Divided Races:

11.8.1 In the event a race is cancelled or declared off, the Licensee may split any race programmed for the same day and which may previously have been closed.

11.8.2 When a purse race is split, forming two or more separate races, the Racing Secretary shall give notice thereof not less than 15 minutes before such races are closed so as to grant time for the making of additional entries to such split races.

11.8.3 Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made and in the absence of specific prohibition by such conditions:

11.8.3.1 Horses originally joined as a mutuel entry shall, to the greatest extent possible, be placed in different divisions of a split race;

11.8.3.2 Division of other entries in any split race may be made according to age, sex or weight, except that such entries not so divided shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

11.9 Post Positions:

11.9.1 Post positions for all races shall be determined by lot drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The Racing Secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two or more horses joined as a single betting interest.

11.10 Also Eligible List:

11.10.1 If the number of entries for a purse race exceeds the number of horses permitted to start in such race, then the names of as many as six (6) additional horses may be drawn as provided in Rule 11.9. The names drawn shall be posted, in the order they were drawn, as "also eligible" to start.

11.10.2 After any horses have been excused from a purse race at scratch time, the starting and post position of such horses as needed from the also-eligible list shall be determined by the order in which they appear on the entry sheet.

Revised: 10/26/95

11.10.3 Any Owner or Trainer of any horse on the also-eligible list who does not wish to start such horse in such race shall so notify the Racing Secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

11.10.4 Where entries are closed two racing days prior to the running of a race, any horse on an also-eligible list, which has also been drawn into a race as a starter for the succeeding day, shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.

11.11 Preferred List; Stars:

11.11.1 The Racing Secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination. As to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.

11.11.2 No preference shall be given a horse otherwise entitled thereto for a race if such horse is also entered for a race on the succeeding day.

11.11.3 No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred".

11.12 Arrears:

11.12.1 No horse may be entered or raced if the Owner thereof is in arrears as to any stakes fees due by such Owner, or is indebted in any sum to Licensee, except with the approval of the Racing Secretary. (Also, see Rule 6.11).

11.13 Declarations:

11.13.1 Withdrawal of a horse from a race before closing thereof by the Owner or Trainer or person deputized by either, such being known as a "declaration", shall be made in the same manner as to form, time and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any Licensee.

11.14 Scratches:

11.14.1 Withdrawal of a horse from a race after closing thereof by the Owner or Trainer or person deputized by either, such being known as a "scratch", shall be permitted only under the following conditions:

11.14.1.1 A horse may be scratched from a stakes race for any reason at any time up until 45 minutes before post time for that race.

11.14.1.2 No horse may be scratched from a purse race without approval of the Stewards and unless such intention to scratch has been filed in writing with the Racing Secretary or his assistant at or before the time conspicuously posted as "scratch time". Scratch of one horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the Stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

11.14.1.3 In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Horses that are not physically disabled or sick may be scratched only with the permission and in the manner prescribed by the Stewards.

11.14.1.4 Entry of any horse which has been scratched or excused from starting by the Stewards because of a physical disability or sickness shall not be accepted until the expiration of three calendar days after such horse was scratched or excused.

11.14.1.5 The Stewards will review all cases in which a horse is entered to run at a licensed track in Delaware, while appearing in the entries in another racing jurisdiction, during the five day entry period for Delaware. It shall be a violation of these Rules for a licensee to scratch a horse entered to race in Delaware in order for said horse to race in another jurisdiction within the five day entry period. Violations of this Rule, absent mitigating circumstances, will be subject to fines of not less than \$1,000 and no more than \$2,500. This rule shall not pertain to Handicap and Stake races.

4 DE Reg. 179 (7/1/00)

19.0 Hearings, Reviews and Appeals

19.1 Procedure Before Stewards:

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

19.1.2.2 The time and place of hearing.

19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of

any racing trade organization of which he is a member.

19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

7 DE Reg. 316 (9/1/03)

19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

19.2 Review and Appeal:

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

19.3 Application for Review:

19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee of \$250 plus an additional fee of \$150 to cover the cost of the court reporter's attendance. The Commission, for just cause, may refund the \$250 portion of the filing fee. In no event shall the advance payment of the court reporter's fee be refunded;

19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;

19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;

19.3.1.4 Succinctly set forth the reasons for making such application;

19.3.1.5 Request a hearing;

19.3.1.6 Briefly set forth the relief sought; and

19.3.1.7 Provide assurance to the Commission

that all expenses occasioned by the appeal will be borne by the applicant; and

19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

19.4 Disposition of Review Application:

19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

19.5 Commission Hearing:

19.5.1 If the Commission grants any such application for review, before holding any hearing thereon, it shall:

19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

19.5.1.1.2 Except to applicant, a copy of the application for review.

19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its

subpoena requiring the person to appear and to testify or produce any books, papers or documents.

19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

19.5.10 The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.

19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys

who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

3 DE Reg. 1541 (5/1/00)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission are available from the Registrar's Office.**

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 610

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

**610 Treatment of Severe Discipline Problems Component
(14 Del.C. §1604 of Chapter 16 Comprehensive School
Discipline Improvement Program August 1998)**

A. Type of Regulatory Action Required

Repeal Existing Regulation and Replace with New Regulations

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to repeal 14 DE Admin. Code 610 Treatment of Severe Discipline Problems

Component (14 Del.C. §1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998) and replace it with two separate regulations (14 DE Admin. Code 609 District and School Based Intervention Services and 14 DE Admin. Code 611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems). The new regulations 609 and 611 streamline and clarify the requirements for each type of program, School Based Programs and Alternative Program Sites.

C. Impact Criteria

1. Will the regulations help improve student achievement as measured against state achievement standards? The regulations address alternative programs for discipline purposes which should have a positive effect on student achievement.

2. Will the regulations help ensure that all students receive an equitable education? The regulations are designed to ensure that all students receive an equitable education even if they are assigned to an alternative program for discipline purposes.

3. Will the regulations help to ensure that all students' health and safety are adequately protected? Health and safety are part of the design of the alternative programs for discipline purposes.

4. Will the regulations help to ensure that all students' legal rights are respected? The alternative programs help assure that students' rights are respected.

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 same authority and flexibility of decision making at the local board and school level as the existing regulation does.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulations will not place any additional or 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 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? There is no less burdensome method for addressing the purpose of the regulations.

10. What is the cost to the State and to the local school boards of compliance with the regulations? There may be some additional costs associated with the development of alternative programs for discipline purposes but this was true before under the existing regulation.

610 Treatment of Severe Discipline problems Component (14 Del.C. Section 1604 of Chapter 16 Comprehensive School Discipline Improvement Program August 1998)

1.0 Population to be Served: Except as otherwise provided herein, all students who are expelled by a local school district or are in danger of being expelled shall be placed in the alternative program unless the student is expelled for an offense equivalent to a violation of one of the following: 11 Del.C. §613 (Assault in the First Degree); or 11 Del.C. §1457 (Possession of a Weapon in a Safe School and Recreation Zone); or 11 Del.C. §802 (Arson in the Second Degree); or 11 Del.C. §803 (Arson in the First Degree); or 11 Del.C. §771 (Unlawful Sexual Penetration in the Second Degree); or 11 Del.C. §772 (Unlawful Sexual Penetration in the First Degree); or 11 Del.C. §773 (Unlawful Sexual Intercourse in the Third Degree); or 11 Del.C. §774 (Unlawful Sexual Intercourse in the Second Degree); or 11 Del.C. §775 (Unlawful Sexual Intercourse in the First Degree); or 16 Del.C. §4753A (Trafficking Marijuana, Cocaine, Illegal Drugs or Methamphetamine).

2.0 Non-referral of Students: In any case in which an expelled student is not referred to an alternative program, the decision of the local school district to expel shall state with specificity the reason for non-referral and the evidence in support thereof.

3.0 Informing the Legal Guardian: Districts shall inform the legal guardian of students for whom expulsion is being considered or who are expelled of the alternative education options that are then currently available to the students. These options shall include but not be limited to the alternative program, GED programs, James H. Groves High School and others.

4.0 Age/Grade Level to be Served: Eligible students shall be primarily those who are enrolled in grades 6 through 12, however students in lower grades may also be served through these funds.

5.0 Placement in Alternative Programs: Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for each student. The Placement Team, in concert with the Alternative

Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both the student and his/her family. The ISP shall include a tentative re-entry/transition plan. The Alternative Placement Team shall be composed of a representative of the Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; student's custodial adult; guidance counselor and/or school social worker; representatives from DSCYF such as Youth Rehabilitation Service or other worker with whom the family is involved as appropriate. Other school, alternative program, or agency personnel may be invited as needed and determined by the Placement Team. Students who are being placed in the Alternative Program as a transition from DSCYF facilities will have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult. If students from either a school district or DSCYF facility are students with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the IEP Team may be the same.

6.0 September 30 Enrollment Count: A student enrolled in an Alternative Program may be counted in the regular school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

7.0 Alternative Program Setting: The Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs so long as the students do not interact with the regular school population or use any school facility at the same time as the regular school population. Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Settings shall meet safety regulations for student occupancy as outlined in Delaware Code.

8.0 Alternative Program Design: The Alternative Program shall include an educational program designed to maintain and improve skills at least in core academic areas such as English/language arts, mathematics, science, and social studies that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Every effort shall be made to provide courses comparable to the regular school setting for each student. Opportunities for academic acceleration will also be provided. The academic program should focus on applied

~~learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Credit for work accomplished in the Alternative Program setting shall be automatically transferred to the regular school. Included in the academic core studies should be study skills, test taking strategies, and academic confidence building. Counseling and other services shall be delivered on-site for students.~~

~~9.0 Staffing: Instructional staff shall include at least two certified teachers in the major academic subject areas who can provide the lead for academic instruction and at least two instructional/service aides. Priority should be given to hiring staff who are qualified to teach special education.~~

~~10.0 Students With Disabilities: Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions of Regulation 925, Children with Disabilities.~~

~~See 2 DE Reg. 374 (9/1/98)~~

~~See 7 DE Reg. 330 (9/1/03)~~

609 District and School Based Intervention Services

1.0 Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 DE Admin. Code 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

2.0 Application for Funding:

Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.

2.1 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

3.0 Student Population to be Served:

Services funded under this regulation may be provided to any student in grades K-12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, students with disabilities shall be served pursuant to the provisions in 14 DE Admin. Code 925.

4.0 School Based Intervention Programs:

If a district, through its LEA Consolidated Application,

provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:

4.1 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts academic performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.

4.2 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.

4.3 When placing a student with disabilities in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the IEP team meets the requirements of 14 DE Admin. Code 925.

5.0 Evaluation of Services:

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be submitted as part of the LEA Consolidated Application process.

611 Consortium Discipline Alternative Programs for Treatment of Severe Discipline Problems

1.0 Eligible Students:

Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program site.

1.1 Local school districts may place a student at a Consortium Discipline Alternative Program site only if the district board:

1.1.1 Has expelled the student for a violation of the district's discipline code; or

1.1.2 Determines that the student has engaged in conduct that permits the board to expel the student; or

1.1.3 Determines that the student has exhibited such severe discipline problems that expulsion is imminent.

1.2 School districts may place a student in a Consortium Discipline Alternative Program site for classroom or school environment disruptions only if:

1.2.1 Such disruptions are chronic and repetitive; and

1.2.2 The student has participated in all available School Based Intervention Programs pursuant to 14 DE Admin. Code 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

2.0 Ineligible students:

Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.

2.1 11 Del.C. §613 Assault in the First Degree; class C felony; or

2.2 11 Del.C. §1457 Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F; class A or B misdemeanor; or

2.3 11 Del.C. §802 Arson in the Second Degree affirmative defense; class D felony; or

2.4 11 Del.C. §803 Arson in the first degree; class C felony; or

2.5 11 Del.C. §770 Rape in the fourth degree; class C felony; or

2.6 11 Del.C. §771 Rape in the third degree; class B felony; or

2.7 11 Del.C. §772 Rape in the second degree class B felony; or

2.8 11 Del.C. §773 Rape in the first degree class A felony; or

2.9 16 Del.C. §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamine, LSD, or designed drugs or

2.10 Any behavior equivalent to or greater than the offenses in 2.1 through 2.9.

3.0 Written Decision:

When a school board expels a student but determines the student shall not be placed at a Consortium Discipline Alternative Program under subsections 2.1.1 to 2.1.10 of this regulation, the school district's written decision shall address with specificity the reason for non-placement and the evidence in support thereof. Such decisions shall be reported to the Delaware Department of Education's Office of School Climate and Discipline within five working days.

4.0 Informing the Parents, Guardians, Relative Caregiver or Students (if the Student is Age 18 or Older):

Districts shall inform the parents, guardians, Relative Caregiver or students (if the student is age 18 or older) of the alternative education options that are then currently available

to them if the students have been expelled or expulsion is being considered. These options may include, but are not be limited to, the Consortium Discipline Alternative Program, a GED Program, James H. Groves High School and continued special education and related services for children with disabilities as determined by the student's individual eligibility for participation in such programs. A student's eligibility for such alternative education options is determined by the requirements of such programs.

5.0 Grade Level to be Served:

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through Alternative Program funds.

6.0 Placement at Consortium Discipline Alternative Program Sites

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a district level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 DE Admin. Code 925.

7.0 September 30 Enrollment Count

7.1 Students enrolled at a Consortium Discipline

Alternative Programs site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a vocational program in the reporting school, the students shall be reported as enrolled in the next vocational course in the program series.

8.0 Consortium Discipline Alternative Program Setting

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.

8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

9.0 Consortium Discipline Alternative Program Design

9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to re-enter the regular school program with a reasonable chance and expectation for success. Opportunities for academic acceleration shall also be provided.

9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, test taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.

9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.

9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP).

10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

11.0 Children With Disabilities

Notwithstanding any of the provisions to the contrary, children with disabilities shall be served pursuant to the provisions of 14 DE Admin. Code 925.

12.0 The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism.

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

851 K-12 Comprehensive Health Education Program

A. Type of Regulatory Action Required

Re-authorization of Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to re-authorize 14 **DE Admin. Code** 851, K-12 Comprehensive Health Education Program. The regulation is due for review under the five year cycle prescribed by statute. Some changes may need to be made, but a task force is currently studying issues related to this regulation and their work will not be completed by the time action is due on the regulation. Changes will be considered following their report and in the meantime the regulation is recommended for reauthorization.

C. Impact Criteria

1. Will the re-authorized regulation help improve student achievement as measured against state achievement standards? Research is indicating a strong connection between good health and student achievement.
2. Will the re-authorized regulation help ensure that all students receive an equitable education? The re-authorized regulation addresses health issues not equity issues.
3. Will the re-authorized regulation help to ensure that all students' health and safety are adequately protected? The re-authorized regulation addresses health issues.
4. Will the re-authorized regulation ensure that all students' legal rights are respected? The re-authorized regulation addresses health issues not students' legal rights.
5. Will the re-authorized regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The re-authorized regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the re-authorized regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-authorized 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 re-authorized 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 re-authorized 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 re-authorized regulation? There is no less burdensome method for addressing the purpose of the re-authorized regulation.

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

851 K-12 Comprehensive Health Education Program

1.0 Each school district shall have a sequential, skill-based K-12 Comprehensive Health Education Program that establishes a foundation of understanding the relationship between personal behavior and health and shall include at a minimum the following:

1.1 Identification of a district level person to coordinate the district program and a coordinator in each building to assure compliance at the building level.

1.2 Appointment of persons such as teachers, parents, school nurses, community leaders, guidance counselors, law enforcement officers and others with expertise in the areas of health, family life and safe and drug free schools and communities to serve as members of the District Consolidated Application Planning Committee.

1.3 The use of the state content standards for health education for grades K-12 inclusive of the core concepts: alcohol and other drugs, injury prevention, nutrition, physical activity, family life and sexuality, tobacco, emotional health, personal and consumer health and community and environmental health with minimum hours of instruction as follows:

1.3.1 In grades K-4, a minimum of thirty (30) hours in each grade of comprehensive health education and family life education of which ten (10) hours, in each grade, must address drug/alcohol education.

1.3.2 In grades 5 and 6, a minimum of thirty-five (35) hours in each grade of comprehensive health education and family life education of which fifteen (15) hours, in each grade, must address drug/alcohol education.

1.3.3 In grades 7 and 8, separate from other subject areas, a minimum of sixty (60) hours of comprehensive health education of which fifteen (15) hours, in each grade, must address drug/alcohol education. If all of the 60 hours are provided in one year at grade 7 or 8, an additional fifteen hours of drug/alcohol education must be provided in the other grade.

1.3.4 In grades 9-12, one-half (1/2) credit of comprehensive health education is required for graduation of which fifteen (15) hours of this 1/2 credit course must address drug/alcohol education. This 1/2 credit course may be provided in the 9th, 10th, 11th or 12th grade. In each of the remaining three grades, fifteen (15) hours of drug/alcohol education must be provided for all students.

1.4 Inclusion of a comprehensive sexuality education and an HIV prevention program that stresses the benefits of abstinence from high-risk behaviors.

1.5 Inclusion of the core concepts of nutrition and family life and sexuality implemented through family and consumer science/home economics courses.

1.6 An annual staff development plan that describes the use of effective instructional methods as demonstrated in sound research in the core concepts and skills inclusive of accessing information, self-management, analyzing internal and external influences, interpersonal communication, decision making and goal setting and advocacy.

1.7 A description of the method(s) used to implement and evaluate the effectiveness of the program which shall be reported every three years as part of the Quality Review for Ensuring School and Student Success.

3 DE Reg. 1073 (2/1/00)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code,
Section 3006A (16 Del.C. §3006A)

PUBLIC NOTICE

Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has drafted

proposed regulations pertaining to training and qualifications of nursing assistants and certified nursing assistants. These proposed regulations clarify and amend certain eligibility criteria for certification as a certified nursing assistant.

These proposed regulations also clarify the responsibility of federally certified nursing facilities to pay the costs of training nursing assistants in accordance with federal regulations at 42 CFR §483.152. The proposed regulations pertaining to payment of the costs of training nursing assistants have been the subject of previous public hearings and have been revised in response to comments received at the public hearings. A discussion of the comments received at those public hearings which were not incorporated into the proposed regulations will appear with the final order when the proposed regulations are published as final regulations.

Invitation For Public Comment

Public hearings will be held as follows:

Tuesday, November 30, 2004, 9:00 AM
Room 301, Main Building, Herman Holloway Campus
1901 North DuPont Highway, New Castle

Thursday, December 2, 2004, 10:00 AM
Department of Natural Resources & Environmental
Control Auditorium
89 Kings Highway, Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are invited on these proposed regulations and should be sent to:

Elise MacEwen, RN
Division of Long Term Care Residents Protection
Mill Road, Suite 308
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the December 2 public hearing.

69 Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

Section 69.200 – General Training Requirements And Competency Test

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

69.201 An individual shall complete a nursing assistant training course approved by the Department on the

recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.

69.202 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

69.203 Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

69.204 A Certified Nursing Assistant must perform at least 64 hours of nursing related services ~~in a health care setting~~ for pay under the supervision of a licensed nurse or physician during each 24-month certification period in order to qualify for recertification. A certified nursing assistant who does not perform at least 64 hours of nursing related services in a certification period must complete and pass a new training course and competency test, or competency test.

69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware in a program that equals or exceeds the federal nurse aide training program requirements in the Code of Federal Regulations § 483.152 cannot work in Delaware without a Delaware certificate. Delaware certification is required prior to being employed as a CNA. The Department will grant reciprocity if the following conditions are met:

A. The CNA must have a current certificate from the jurisdiction where he or she currently practices, except that candidates from the State of Maryland must hold a current Geriatric Nursing Assistant certificate.

B. The CNA must have 3 months of full-time experience as a CNA performing nursing related services for pay under the supervision of a licensed nurse or physician, or have completed a training and competency evaluation program with the number of hours at least equal to that required by the State of Delaware.

C. The CNA must be in good standing in the jurisdiction where he/she is currently certified.

69.206 Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in an RN or LPN nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

69.207 Individuals who have graduated from an RN or LPN program within 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training and competency evaluation program requirements and are eligible for certification upon submission of a sealed copy of their diploma. Individuals who have graduated from an RN or LPN program more than 24 months prior to application for certification are deemed qualified to meet the Department's nurse aide training program requirements and are eligible to take the competency test upon submission of a sealed copy of their diploma.

69.208 An individual who has satisfactorily completed a military nursing assistant training course or hospital-based nursing assistant training course of at least 150 hours with a curriculum comparable to the curriculum content of Section 69.303 of these regulations and who has performed nursing related services within 24 months prior to application for certification is deemed qualified to meet the Department's nurse aide training program requirements and is eligible to take the competency test upon submission of documentation of course completion.

69.208~~9~~ For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

69.209 ~~A nursing assistant who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, initial and any subsequent testing and fees for textbooks or other required course materials.~~

69.210 ~~If a certified nursing assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide training and competency evaluation program, the facility shall reimburse all personally incurred costs in completing the program. Such costs include tuition, initial and any subsequent testing and fees for textbooks or other required course materials. Such costs are payable upon completion by the CNA of a six month period of employment including the orientation period.~~

69.211 ~~The facility shall be required to notify the Department upon reimbursement to a CNA of personally incurred costs of the nurse aide training and competency evaluation program for the purpose of inclusion in the CNA registry database. Facilities may contact the Department to verify the reimbursement status of any CNA seeking such reimbursement.~~

69.210 A nursing assistant who is employed by, or

who has received an offer of employment from, a federally certified nursing facility on the date on which the aide begins a nurse aide training and competency evaluation program may not be charged for any portion of the program including tuition, any tests taken and fees for textbooks or other required course materials.

69.211 If a Certified Nursing Assistant who is not employed, or does not have an offer to be employed as a nurse aide becomes employed by, or receives an offer of employment from, a federally certified nursing facility not later than 12 months after completing a nurse aide training and competency evaluation program, the federally certified nursing facility shall reimburse all documented personally incurred costs in completing the program. Facilities shall accept as documentation canceled checks, paid receipts, written verification from a training program or other written evidence which reasonably establishes the CNA's personally incurred costs. Such costs include tuition, tests taken and fees for textbooks or other required course materials. Such costs shall be reimbursed in equal quarterly payments with full reimbursement to coincide with the CNA's completion of one year of employment including the orientation period.

69.212 Any nursing facility which reimburses a Certified Nursing Assistant for documented personally incurred costs of a nurse aide training and competency evaluation program shall notify the Division of Long Term Care Residents Protection of such reimbursement. Notice of such reimbursement shall be entered in the CNA Registry database and information regarding such reimbursement shall be available to facilities upon request.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

MEDICAID/MEDICAL ASSISTANCE PROGRAMS Client Cost Sharing for Pharmaceutical Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting co-payments for pharmaceutical services from Medicaid/Medical Assistance clients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by November 30, 2004.

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

SUMMARY OF THE PHARMACY SERVICES CO-PAYMENT POLICY

Title of Notice

Medicaid/Medical Assistance Client Cost Sharing

Overview

42 USC 1396a(a)(14) permits state Medicaid programs to require certain clients to share some of the costs of Medicaid by imposing enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. The Delaware Medicaid/Medical Assistance Program (DMAP) exercises this option to impose a co-payment for prescription drugs for Medicaid clients. Having elected to impose this co-payment, DMAP must comply with the specific provisions of 42 U.S.C. 1396o, 42 CFR §§447.15, 447.21, 447.53, 447.54, 447.55 and, 447.57.

Summary of Pharmacy Services Co-Payment Policy

This notice is being given to provide information of public interest with respect to the intent of DSS to amend the Division of Social Services Manual (DSSM) and to submit to the Centers for Medicare and Medicaid Services (CMS) an amendment to the Title XIX Medicaid State Plan to establish and implement co-payments for pharmacy services. The following provisions of this amendment shall be implemented on January 10, 2005:

- All clients, other than those specifically excluded, are liable for sharing the cost of Medicaid covered prescription drugs. Medicaid clients are required to pay a specific pharmacy co-pay amount for each initial and refilled prescription and over-the-counter drug filled at a pharmacy participating in the Medicaid program.
- In accordance with 42 CFR §447.54, the pharmacy co-pay amount is based on the Medicaid fee for the drug being dispensed. The co-pay amounts

imposed are as follows:

| <u>Medicaid Fee</u> | <u>Co-Pay Amount</u> |
|---------------------|----------------------|
| \$10.00 or less | \$.50 |
| \$10.01-\$25.00 | \$1.00 |
| \$25.01-\$50.00 | \$2.00 |
| \$50.01 or more | \$3.00 |

- Cumulative Maximum [42 CFR §447.54(d)]. Not applicable, there is no maximum.
- In accordance with Social Security Act §1916 and 42 CFR §447.53, co-payments are not imposed upon categorically needy individuals for the following:
 - Services furnished to individuals under 21 years of age;
 - Services furnished to pregnant women; including postpartum care;
 - Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution;
 - Emergency services;
 - Family Planning services and supplies; and,
 - Services furnished to individuals receiving hospice care.
- The pharmacy will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed [42 CFR §447.53(e)].
- The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able.
- Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client co-pay amount.

The proposed amendment applies to Medicaid clients and shall be implemented on January 10, 2005.

The proposed cost sharing requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS)

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Revision:

OMB No.: 0938-

State/Territory: DELAWARE

Revision:

OMB No.: 0938-

State/Territory: DELAWARE**Citation**
42 CFR 447.51
through 447.58

- 4.18 Recipient Cost Sharing and Similar Charges
- (a) Unless a waiver under 42 CFR 431.55(g) applies deductibles, coinsurance rates, and co payments do not exceed the maximum allowable charges under 42 CFR 447.54.

1916 (a) and (b) of the Act

- (b) Except as specified in items 4.18 (b) (4), (5) and (6) below, with respect to individuals covered as categorically needy or as qualified Medicare beneficiaries (as defined in section 1905 (p) (1) of the Act) under the plan:
- (1) No enrollment fee, premium, or similar charge is imposed under the plan.
- (2) No deductible, coinsurance, co-payment, or similar charge is imposed under the plan for the following:
- (i) Services to individuals under age 18, or under--
- Age 19
- Age 20
- Age 21
- Reasonable categories of individuals who are age 18 or older, but under age 21, to whom charges apply are listed below, if applicable.
- (ii) Services to pregnant women related to the pregnancy or any other medical condition that may complicate the pregnancy.

Citation

4.18 (b) (2) (Continued)

42 CFR 447.51 through 447.58

- (iii) All services furnished to pregnant women.
- Not applicable. Charges apply for services to pregnant women unrelated to the pregnancy.
- (iv) Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution, if the individual is required, as a condition of receiving services in the institution, to spend for medical care costs all but a minimal amount of his or her income required for personal needs.
- (v) Emergency services if the services meet the requirements in 42 CFR 447.53 (b) (4).
- (vi) Family planning services and supplies furnished to individuals of childbearing age.
- (vii) Services furnished by a health maintenance organization in which the individual is enrolled.
- (viii) Services furnished to an individual receiving hospice care, as defined in section 1905 (o) of the Act.

1916 of the Act, P.L. 99-272, (Section 9505)

Revision: OMB No.: 0938-

State/Territory: DELAWARE

Citation 4.18(b) (Continued)

42 CFR 447.51 through 447.48 (3) Unless a waiver under 42 CFR 431.55 (g) applies, nominal deductible, coinsurance, co-payment, or similar charges are imposed for services that are not excluded from such charges under item (b) (2) above.

Not applicable. No such charges are imposed.

(i) For any service, no more than one type of charge is imposed.

(ii) Charges apply to services furnished to the following age groups:

- 18 or older
- 19 or older
- 20 or older
- 21 or older

Charges apply to services furnished to the following reasonable categories of individuals listed below who are 18 years of age or older but under age 21.

Revision: OMB No.: 0938-

State/Territory: DELAWARE

Citation 4.18 (b) (3) (Continued)

42 CFR 447.51 through 447.58 (iii) For the categorically needy and qualified

Medicare beneficiaries, ATTACHMENT 4.18-
A specifies the:

- A. Service(s) for which a charge(s) is applied;
- B. Nature of the charge imposed on each service;
- C. Amount(s) of and basis for determining the charge(s);
- D. Method used to collect the charge(s);
- E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers;
- F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b);and
- G. Cumulative maximum that applies to all deductible, coinsurance or co-payment charges imposed on a specified time period.

Not applicable.
There is no maximum.

PROPOSED REGULATIONS

Revision:

OMB No.: 0938-

1902 (a) (52) and 1925 (b) of the Act

4.18 (b) (5)

For families receiving extended benefits during a second 6-month period section 1925 of the Act, a monthly premium is imposed in accordance with sections 1925 (b) (4) and (5) of the Act.

State/Territory: DELAWARE

Citation

1916 (c) of the Act

4.18 (b) (4) A monthly premium is imposed on pregnant women and infants who are covered under section 1902 (a)(10)(A) (ii) (IX) of the Act and whose income equals or exceeds 150 percent of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (c) of the Act are met ATTACHMENT 4.18-D specifies the method the State uses for determining the premium and the criteria for determining what constitutes undue hardship for waiving payment of premiums by recipients.

1916 (d) of the Act

4.18 (b) (6)

A monthly premium, set on a sliding scale, imposed on qualified disabled and working individuals who are covered under section 1902 (a) (10) (E) (ii) of the Act and whose income exceeds 150 percent (but does not exceed 200 percent) of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (d) of the Act are met. ATTACHMENT 4.18-E Specifies the methods and standards the State uses for determining the premium.

DSS PROPOSED REGULATION #04-22b

NEW STATE PLAN PAGE

Revision:

ATTACHMENT 4.18-A
Page 1
OMB NO.: 093-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE: DELAWARE

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (1) through (5) and (7) of the Act:

| Service | Type of Charge | | | Amount and Basis for Determination |
|----------|----------------|-------------|------------|--|
| | Deductible | Coinsurance | Co-payment | |
| Pharmacy | -0- | -0- | X | This co-pay is effective January 10, 2005 and is based on the nominal ranges specified in 42 CFR 447.54(a)(3), based on the State fee for the service. |

NEW STATE PLAN PAGE**Revision:****ATTACHMENT 4.18-A****Page 2****OMB NO.: 093-0193****STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****STATE: DELAWARE**

B. The method used to collect cost sharing charges for categorically needy individuals:

Providers are responsible for collecting the cost sharing charges from individuals.

The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed.

The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client co-pay amount.

NEW STATE PLAN PAGE**Revision:****ATTACHMENT 4.18-A****Page 3****OMB NO.: 093-0193****STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT****STATE: DELAWARE**

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Pharmacy Providers have been informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; and (2) provider newsletters.

Co-payment requirements are set forth in provider manuals, which are distributed, to all providers. The billing instructions are updated and transmitted to providers via the Provider Newsletter. These instructions have been incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges:

State policy does not provide maximums.

Cumulative maximums have been established as described below:

DSS PROPOSED REGULATION #04-22c**Division of Social Services Manual (DSSM)**14960 Cost Sharing

Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges.

14960.1 Co-Payment Requirement

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

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

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

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

14960.2 Exclusions from Co-payment Requirement

The following individuals and services are excluded from the co-payment requirement:

- a. individuals under age 21
- b. pregnant women, including the postpartum period
- c. individuals eligible under the long term care nursing
- d. facility group or the acute care hospital group
- e. emergency services
- f. family planning services and supplies
- h. hospice services

14960.3 Inability to Pay

The pharmacy provider may not refuse to dispense the prescription(s) subject to the co-payment requirement because of the individual's inability to pay the co-payment amount. When a recipient indicates that he or she is unable to meet the co-payment requirement, the pharmacy provider must dispense the prescription(s) as written. Medicaid reimbursement for the prescription(s) will be the Medicaid fee minus the applicable co-payment amount.

The recipient remains liable for the co-payment amount and is responsible for paying the pharmacy when financially able. The pharmacy provider is permitted to pursue reimbursement of the co-payment amount from the recipient.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE**Temporary Assistance for Needy Families**

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware 19720-0906 by November 30, 2004.

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

Summary Of Proposed Changes

- 1) DSSM 3003 Non-Time Limited Program – Children's Program
 - In accordance with the Trademark Agreement, replaced previous program name with Delaware's Temporary Assistance for Needy Families Welfare Reform Program, where applicable.
 - Adds language that states if a family is placed in the TANF Children's Program because the parent or caretaker is caring for a disabled family member, DSS will obtain a statement or have the DSS Medical Certification form completed by a medical professional to verify that the person is needed in the home to care for the disabled family member.

2) DSSM 3031 Work for Your Welfare

- Adds language that states to be exempt from Workfare, TANF recipients who are employed need to be earning at least the equivalent of minimum wage at twenty hours per week.

DSS PROPOSED REGULATION #04-21**3003 Non-Time Limited Program - Children's Program**

DELAWARE'S A BETTER CHANCE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES WELFARE REFORM PROGRAM creates a non-time-limited program for certain families, referred to as the Children's Program. Families with the following status will receive benefits in the Children's Program:

- Families that the agency has determined are unemployable and unable to achieve self-sufficiency, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent; or
- Families headed by a non-needy, non-parent caretaker; or
- Families where the agency has determined that the adult caretaker is temporarily unemployable. Based on medical information, DSS will set the duration of the unemployability. The caretaker has the responsibility to request an extension and provide proof of continuing unemployability. Otherwise, DSS will consider the caretaker employable and transfer the family to the time-limited program.
- Families in which the adult files a claim or has a claim being adjudicated for SSI or disability insurance under OASDI. (In this case, the family must sign an agreement to repay cash benefits received under the Children's Program from the proceeds of the first SSI/DI check received. However, the Division will require this only as long as the SSI/DI benefit includes retroactive payments for a period when the family received benefits under the Children's Program. The amount repaid will not exceed the amount of the retroactive SSI/DI benefit.)

In cases for which the family is placed in the Children's program because the parent (or other caretaker relative) is caring for a disabled family member, DSS will obtain a statement from a medical professional or have the DSS Medical Certification form completed by a medical professional to verify that the person is needed in the home

to care for the disabled family member.

CONTRACT OF MUTUAL RESPONSIBILITY requirements and sanctions for non-compliance apply to families in the Children's Program.

3031 Work For Your Welfare

All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single adult recipients, who reach their 22nd month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. Additionally, all TANF recipients who are employed must earn at least the equivalent of minimum wage at twenty hours per week will be considered mandatory for Work for Your Welfare. Work for Your Welfare is defined as a work experience program in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity per week. The failure to complete job search as required will result in a progressive 1/3 sanction. For two parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites

DEPARTMENT OF INSURANCE

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

NOTICE OF PUBLIC HEARING

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Thursday, December 2, 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 1501** (formerly Regulation 41) relating to **Medicare Supplement Insurance Minimum Standards**.

The purpose for amending Regulation 1501 is to adopt the changes to the model regulation approved by the National Association of Insurance Commissioners as of September 8, 2004, changes to guaranteed insurability and miscellaneous style and semantic changes.

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., Wednesday December 1, 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.

DUE TO THE LENGTH OF THE REGULATION THE FULL TEXT IS NOT BEING PUBLISHED. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ONLINE.

**Regulation 1501 Medicare Supplement Insurance
Minimum Standards (PDF Version)**

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

AIR QUALITY MANAGEMENT SECTION

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

REGISTER NOTICE

SAN #: 2004 - 11

1. **Title of the Regulation:**
Regulation No. 43 – Not To Exceed Heavy Duty California Engine Standards
2. **Brief Synopsis of the Subject, Substance And Issues:**
The Clean Air Act Amendments of 1990 (CAAA) allows Delaware and all states to submit to the U.S. Environmental Protection Agency (EPA) a SIP revision which adopts engine standards after, and only after, the State of California has adopted those standards. The purpose of this action is to adopt the Heavy Duty Diesel (HDD) portion of the federal Rule on 2007 and later Heavy Duty Engines in order to preserve the emission reduction benefits of that federal Rule should EPA delay, diminish or perhaps even delete their adopted Rule. This action could best be described as a “backstop” action that would only become necessary and in effect on 2007 and later model year HDDs, should EPA take any of the three options described above. This action will be an additional section to existing Regulation No. 43, which is a similar “backstop” regulation on strictly model year 2005 and 2006 HDDs. The standards for 2007 and later HDDs is more stringent than on pre-2007 HDDs.
3. **Possible Terms of the Agency Action:**
None.
4. **Statutory Basis or Legal Authority to Act:**
7 Del.C. Ch. 60, Environmental Control
5. **Other Regulations that may be Affected by the Proposal:**
None.
6. **Notice of Public Comment:**
A public hearing will be held on December 1, 2004 beginning at 6:00 PM in the Pricilla Building, 156 South State Street, Dover, Delaware.
7. **Prepared by:**
Philip Wheeler, (302) 323-4542, October 8, 2004

**AMENDMENTS TO: Regulation Number 43
“Not To Exceed California Heavy Duty Diesel Engine
Standards”**

**TO BE RENAMED TO: “Heavy Duty Diesel Engine
Standards”**

**Delaware Department of Natural Resources and
Environmental Control
Division of Air and Waste Management
Air Quality Management Section
Dover, Delaware**

November 2004

Proposed Amendments to Regulation No. 43

Regulation Number 43 is hereby re-named from “Not To Exceed California Heavy Duty Diesel Engine Standards” to “Heavy Duty Diesel Engine Standards”. This was necessitated due to the addition of later model years than those subject to the existing regulation.

Section 1.0 of this proposal contains the entirety of existing Regulation Number 43, and only reformatted to current Delaware Register of Regulations standards, which also required providing a name for the section. No wording changes were made that would affect the regulatory authority of the existing regulation. A title for the section was added to reflect the applicable model years within the overall scope of Heavy Duty Diesel Standards, and the addition of the words “section” and “sub-section”, consistent with the aforementioned formatting standards, were also made to make the section read properly. The new parent Department of the Division of Motor Vehicles was also corrected from Public Safety to Transportation, which was effective in July, 2003.

Section 2.0 of this proposal contains totally new wording, and is both the reason and the substance of the regulation amendment.

The entire revised and supplemented Regulation Number 43 follows:

Regulation No. 43

**~~Not To Exceed California Heavy Duty Diesel Engine
Standards~~ Heavy Duty Diesel Engine Standards**

**1.0 On Road Heavy Duty Diesel Requirements for
Model Years 2005 and 2006**

1.1 Applicability

These rules apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported,

delivered, rented acquired, or received in the State of Delaware.

1.2 Definitions

The following definitions are applicable to this section:

“Department” means The Delaware Department of Natural Resources and Environmental Control.

“Division” means The Delaware Division of Motor Vehicles of the Delaware Department of ~~Public Safety~~ Transportation.

“Emergency vehicle” means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

“Executive Order” means a document issued by the California Air Resources Board (CARB) certifying that a specified engine family or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.

“Heavy-duty diesel engine” means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

“Heavy-duty motor vehicle” means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

“Model year” means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

“New motor vehicle” means a motor vehicle, the equitable or legal title to which has never been transferred to

an ultimate purchaser

“*New motor vehicle engine*” means a new engine in a motor vehicle.

“*Ultimate purchaser*” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

“*Ultra-small volume manufacturer*” means any manufacturer with Delaware sales less than or equal to 300 new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

“*Urban bus*” means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

1.3 Severability

Each sub-section of this section shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

1.4 Reporting Requirements

All manufacturers of 2005 and 2006 model year heavy-duty diesel vehicles with a MGVWR of 14,001 pounds or greater shall provide certification that the engine used in the manufacturer’s vehicle comply with the applicable exhaust emissions standards under Title 13, Section 1956.8 of the California Code of Regulations, and shall be consistent with the Executive Order issued by CARB for the appropriate engine family or model year. This certification shall be sent to the Department thirty (30) days prior to the date of the first vehicle being potentially available for sale.

1.5 Dealer Compliance

No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in the State of Delaware, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for

registration in the State of Delaware, unless the manufacturer has certified on the Certificate of Origin that the engine in the vehicle complies with Title 13, Section 1956.8 of the California Code of Regulations last amended on July 25, 2001 or complies with other documentation approved and provided by the Department:

1.5.1 A 2005 or 2006 model year heavy-duty diesel engine;

1.5.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or

1.5.3 A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

1.6 Exemptions and Technology Review

Notwithstanding sub-section 1.4, the requirements of this section shall not apply to:

1.6.1 A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

1.6.2 An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

1.6.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

1.6.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

1.6.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

1.6.6 An emergency vehicle;

1.6.7 A military tactical vehicle or equipment;

or

1.6.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

1.7 Manufacturer Compliance with California Orders and Voluntary Recalls

1.7.1 Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for

sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

1.7.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

1.8 Adoption and Incorporation by Reference of California Rules

The Department hereby adopts and incorporates by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and 2006 heavy-duty diesel engines adopted by the California Air Resources Board on December 8, 2000, and any future amendments to these provisions that the CARB may promulgate. These standards are found in section 1956.8 of Title 13 of the California Code of Regulations, which incorporates by reference the test procedures for determining compliance with the standards.

1.9 Requirements for Vehicle Registration and Transactions

1.9.1 No new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine may be registered with the Division unless the applicant provides a copy of the Certificate of Origin which complies with sub-section 1.5 of this regulation or the Department provides notification to the Division that all vehicles from a specific manufacturer are in compliance with sub-section 1.5 of this regulation or other documentation approved by the Department.

1.9.2 No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in this state, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this state, unless the manufacturer of the engine has received such a Certificate of Origin which complies with the standards adopted in sub-section 1.4 of this regulation or the manufacturer provides other Department approved documents certifying compliance with Title 13, Section 1956.8 of the California Code of Regulations, last amended July 25, 2001:

1.9.2.1 A 2005 or 2006;

1.9.2.2 A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or

1.9.2.3 A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

1.10 Exemptions and Technology Review

Notwithstanding sub-section 1.8, the requirements of this section shall not apply to:

1.10.1 A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

1.10.2 An engine if, following a technology review, the CARB determines, and is subsequently approved by the Department, that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

1.10.3 A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

1.10.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

1.10.5 A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

1.10.6 An emergency vehicle;

1.10.7 A military tactical vehicle or equipment; or

1.10.8 Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

1.11 Manufacturer Compliance with California Orders and Voluntary Recalls

1.11.1 Any order or enforcement action taken by the CARB to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in State of Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

1.11.2 Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable

engines and motor vehicles subject to this regulation:

- 1.11.2.1 Sold, leased, or rented,
- 1.11.2.2 Offered for sale, lease, or rental, or
- 1.11.2.3 Registered in Delaware, except where

the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

2.0 On Road Heavy Duty Diesel Requirements for Model Year 2007 and Later

2.1 Applicability

Except as specifically provided in sub-section 2.2, this section applies to all heavy-duty diesel vehicles sold, leased or registered for use in Delaware where:

2.1.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and

2.1.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of this section.

2.2 Exemptions

Notwithstanding sub-section 2.1, the requirements set forth in this section do not apply to:

2.2.1 A heavy-duty diesel engine intended for use in an urban bus;

2.2.2 A heavy-duty diesel engine of a model year and engine family for which CARB has determined, based upon its technology review, that compliance with its heavy-duty diesel engine standards is not required;

2.2.3 A vehicle acquired outside of Delaware by a resident of Delaware for the purpose of replacing a vehicle registered to the resident which, while out of Delaware, was stolen, or was damaged, or became inoperative, beyond reasonable repair; provided that such replacement vehicle is acquired within a reasonable amount of time following the time the previously owned vehicle was either stolen, damaged, or became inoperative;

2.2.4 A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

2.2.5 An emergency vehicle; or

2.2.6 A military tactical vehicle or equipment.

2.3 Definitions

For the purpose of this section, the following definitions apply:

"CARB" means the California Air Resources Board, as set out in section 39003, California Health and Safety Code. (1999)

"The terms certification; diesel-cycle; emergency vehicle; engine family; heavy-duty vehicle; heavy-duty diesel engine; medium duty vehicle; military tactical vehicles and equipment; model year; urban bus; and ultimate purchaser" each shall have the meaning set out in Title 13, California Code of Regulations ("CCR") and

section 165 of the California Vehicle Code.

"Division" means The Delaware Division of Motor Vehicles of the Delaware Department of Transportation.

"Emergency vehicle" means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

"Heavy-duty diesel engine" means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

"Heavy-duty motor vehicle" means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater

"Lease" means any commercial transaction recognized under the laws of this State as a means of creating a right to use a good and includes renting. It also includes offering to rent or lease.

"Model year" means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Sell" means any commercial transaction recognized under the laws of this State as a means of transferring ownership of a good and includes barter. It also includes offering for sale.

"Urban bus" means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus

operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

2.4 Prohibition Against Sale or Registration of Noncomplying Vehicles

No person shall sell, lease or register a heavy-duty vehicle for use in Delaware if:

2.4.1 Such vehicle is equipped with a 2007 Model Year or later diesel engine, and

2.4.2 The engine family for the installed engine was first certified by CARB at least two years after the effective date of this section, unless the heavy-duty engine installed in such vehicle has been certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8, and the test procedures incorporated by reference therein that apply to Model Year 2007 and subsequent engines.

2.5 Recall of Vehicles

If, for any reason, the manufacturer of any vehicle or engine subject to this Section conducts a recall, whether required or voluntary, or a service campaign in any other state that involves any emissions-related component or element of design that is incorporated in vehicles sold, leased or registered in Delaware, such manufacturer shall notify the Division no later than five days after initiating such recall or service campaign and, unless the Division determines that the recall or service campaign is unwarranted given the facts of the matter, shall conduct such recall or service campaign on vehicles registered in Delaware in accordance with a schedule determined by the Division.

2.6 Prohibition Against Sale or Registration of Recalled Vehicles

2.7 No person shall sell, lease or register a heavy-duty vehicle subject to the requirements of this section if such vehicle has been the subject of an emissions-related recall, unless the vehicle has been corrected in accordance with a recall plan pursuant to this section.

2.8 Prohibition Against Stockpiling

The purchase of engines or vehicles in excess of normal business needs for the purpose of evading the requirements of this section shall be unlawful. No heavy-duty vehicle that is manufactured after January 1, 2007, may be sold, leased or registered in Delaware unless it contains an engine certified by CARB as meeting all requirements of Title 13, CCR, section 1956.8 that apply to Model Year 2007 and subsequent engines.

**DIVISION OF AIR AND WASTE MANAGEMENT
TANK MANAGEMENT BRANCH**

Statutory Authority: 7 Delaware Code,
Chapter 74A (7 Del.C. Ch. 74A)

REGISTER NOTICE

1. Title of the Regulations:

Regulations Governing Aboveground Storage Tanks

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

Senate Substitute No. 1 for Senate Bill No. 344 amended several sections of Title 7, Chapter 74A, The Jeffrey Davis Aboveground Storage Tank Act which required subsequent changes in the Delaware Regulations Governing Aboveground Storage Tanks. Other changes were made to add clarification to the existing Regulations.

Proposed changes include:

Part A, §1.2.2. – added Part A, §6 to correct omission in original Regulations.

Part A, §1.2.3. – added Part A, §6 to correct omission in original Regulations.

Part A, §1.2.3.3. – added Part A, §10 to comply with new signage requirements.

Part A, §1.2.4. –reworded to show what parts of the Regulations Hazardous Waste ASTs are not subject to.

Part A, §2

Change-In-Service – additional changes in service added

Closure – deleted as it is not used in the Regulations

Permanent Change in Contents – definition added

Permanent Closure in Place or *Permanently Closed in Place* or *Permanently Closing in Place* or *Permanently Closed* – definition added

Relocation or *Relocating* or *Relocated* – definition added

Removal or *Removing* or *Removed* – definition added

Upgrade – definition added

Part A, § 4.1.2. – Added *Permanent Change in Contents* (from regulated substance to unregulated substance) as situation whereby registration of an AST would no longer be required.

Part A, §4.3.2. – Capitalized defined terms.

Part A, §4.3.3. – Capitalized defined terms.

Part A, §4.4.2.5. – Capitalized defined terms.

Part A, §4.5.4. – Capitalized defined terms.

Part A, §4.6.1. – Capitalized defined terms.

Part A, §4.6.2. – Capitalized defined terms.

Part A, §7.1.1. – Deadline for preparation of Release Preparedness Plan added.

Part A, §8.1.6.5 – Capitalized defined terms.

Part A, §10 – Section added to require labeling of ASTs per SS1 for SB344.

Part B, §1.1. – The requirements for relocated ASTs stipulate that the relocated AST must meet New AST requirements therefore AST relocations has been added to the section for New ASTs.

Part B, §1.1. – AST relocations added to New AST section.

Part B, §1.3 – Notification requirement for Relocated AST added to mirror notification requirements for New ASTs.

Part B, §1.3.2. - Requirement for Relocated AST plans to be corrected to meet New ASTs requirements added to mirror requirements for New ASTs.

Part B, §1.4. - Requirement for Relocated AST approval letters to be posted added to mirror posting requirement for New ASTs.

Part B, §1.9. – Clarification added for construction permit fees. Construction Permit Fees apply only to New ASTs, not those being Relocated.

Part B, §9.1.7. - Capitalized defined terms.

Part B, §10.1. – Additional Referenced Standards added to include Shop-Fabricated ASTs.

Part B, §10.2. – Clarifications added and a requirement that the Department be notified and a formal approval letter be issued before Relocation of an AST added.

Part B, §11.1.5. - Capitalized defined terms.

Part B, §11.1.6. - Capitalized defined terms.

Part B, §11.2.1. - Capitalized defined terms.

Part B, §11.3. – This section was added to address ASTs that were built prior to the Regulations and are converting from storage of a non-Regulated Substance to storage of a Regulated Substance. Requirements include notification to the DNREC; internal cleaning and inspection; inspection to determine if the AST is structurally sound and Upgrading of piping.

Part B, §11.4. - This section was added to address ASTs that were built after the Regulations and are converting from storage of a non-Regulated Substance to storage of a Regulated Substance. Requirements include notification to the DNREC; internal cleaning and inspection; inspection to determine if the AST is structurally sound; API 570 testing and Upgrading of piping; and Upgrading of the AST to meet New AST standards as applicable.

Part B, §13.1.2. – Added clarification that the Department does not require notification for ASTs that are Out-of-Service for scheduled inspection or maintenance.

Part B, §13.1.3.2.- Deleted prescriptive requirement that manways on out-of-service ASTs be bolted and that valves be capped.

Part B, §13.1.3.3. – A requirement that documentation of the proper disposal of sludge, solids and residual Regulated Substances be retained has been added.

Part B, §13.1.4. – The site assessment requirement for ASTs that have been Out of Service for over 3 years was originally only in Part B, §14. It is reiterated here for clarification and remains in Part B, §14 also.

Part B, §14 – *Relocations* has been added to this section to address situations where a tank is removed from one area and relocated to another.

Part B, §14.1.1. – The notification requirement has been deleted as it is detailed in the Notification section in Part A.

Part B, §14.1.1. – *Relocation* and *Conversion of an AST* have been added to this section to clarify situations where contamination may be detected.

Part B, §14.2. - *Relocation* and *Conversion of an AST* have been added to this section to clarify situations when a site assessment is required.

Part B, §14.2.1.2. - Capitalized defined terms.

Part B, §14.2.1.3. - *Relocation* and *Conversion of an AST* have been added to this section to clarify situations when a site assessment is required.

Part B, §14.2.6. - *Relocation* and *Conversion of an AST* have been added to this sub-section to be consistent within all subsections of §14.

Part B, §15 – This section has been added to clarify the requirements when Removing an AST.

Part B, §16 - This section has been added to clarify the requirements when Permanently Closing an AST.

Part B, §17 - This section has been added to clarify the requirements when a Permanent Change in Contents of an AST occurs.

Part C, §1.1.2. – Added “or monthly” to accommodate months with 31 days.

Part C, §1.1.2.1 – Added “monthly” to accommodate months with 31 days.

Part C, §1.1.2.2. – Added “monthly” to accommodate months with 31 days.

Part C, §2.2.1. – Changed 30 days to 31 days to accommodate months with 31 days.

Part C, §3.1.1. – Changed 90 days to 93 days to accommodate months with 31 days.

Part C, §4.1.2. – Capitalized defined term.

Part C, §4.1.6. - Added “monthly” to accommodate months with 31 days.

Part C, §5.2.1. – Changed “every 60 days” to “no less frequently than every sixty-three (63) days” to accommodate months with 31 days.

Part C, §6.2.1. - Changed 30 days to 31 days to accommodate months with 31 days.

Part C, 8.1.5. - Changed 30 days to 31 days to accommodate months with 31 days.

Part D, § 3. – The aggregate storage capacity categories for the amount and scope of Financial Responsibility have been changed to more effectively represent the breakdown of AST ownership in Delaware.

3. Possible Terms of the Agency Action:**4. Statutory Basis or Legal Authority to Act:**

Title 7, Del.C. Ch. 74A, The Jeffrey Davis Aboveground Storage Tank Act and Senate Substitute No. 1 for Senate Bill No. 344.

5. Other Regulations that may be Affected by the Proposal:

None known.

6. Notice of Public Comment:

A Public Hearing will be held November 22, 2004 at 6:00pm at the DNREC, 391 Lukens Drive, New Castle, DE office.

7. Prepared by:

Jill Williams Hall , 302-395-2500, October 7, 2004

DUE TO THE LENGTH OF THE REGULATION THE FULL TEXT IS NOT BEING PUBLISHED. THE REGULATION IS AVAILABLE FROM THE REGISTRAR OR ONLINE.

Aboveground Storage Tank (PDF Version)
Aboveground Storage Tank (HTML Version)

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,
Chapter 60 & 74A (7 Del.C. Ch. 60 & 74A)

REGISTER NOTICE**1. Title of the Regulations:**

Regulations Governing the Control of Water Pollution

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

When the Delaware Regulations Governing Aboveground Storage Tanks became effective on June 11, 2004 an overlap between the Regulations Governing Aboveground Storage Tanks and the Regulations Governing the Control of Water Pollution was created.

The definition of "Aboveground Storage Tank" as stated in Title 7, Del.C. Ch. 74A and the Regulations Governing Aboveground Storage Tanks and the definition of "Bulk storage facility" in the Delaware Regulations Governing the Control of Water Pollution encompass the same set of aboveground storage tanks. The definition of "Bulk storage facility" is being amended to remove from the Regulations Governing the Control of Water Pollution those aboveground storage tanks that are included by definition in the Regulations Governing Aboveground Storage Tanks.

3. Possible Terms of the Agency Action:**4. Statutory Basis or Legal Authority to Act:**

Title 7, Chapter 74A and Title 7, Chapter 60

5. Other Regulations that may be Affected by the Proposal:

The Regulations Governing Aboveground Storage Tanks.

6. Notice of Public Comment:

A Public Hearing will be held November 22, 2004 at 6:00pm at the DNREC, 391 Lukens Drive, New Castle, DE office.

7. Prepared by:

Jill Williams Hall, 302-395-2500, Date October 7, 2004

Regulations Governing the Control of Water Pollution**2.0 Definitions**

As used in these regulations, the following terms shall be defined as outlined herein.

2.01 "Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act Amendments of 1972); Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117, Pub. L. 100-4 (Water Quality Act of 1987), Pub. L. 100-688, Pub. L. 100-581, Pub. L. 102-580, Pub. L. 102-240; 33 U.S.C. 1251 et seq.

2.02 "Activity" means construction, or operation, or use of any facility, property, or device.

2.03 "Agricultural commodity" means any agricultural product, including but not limited to plants and animals and plant and animal products grown, raised or produced within the State for use as food, feed, seed, or any aesthetic, industrial or chemurgic purpose.

2.04 "Animal feeding operation" means a lot or facility, together with any associated treatment works or waste management systems, where both of the following conditions are met: 1. Animals have been, are, or will be stabled or confined or kept and fed or maintained for a total of 45 days or more in any 12-month period; and 2. Crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

2.05 "Animal waste management system" means a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use on

cropland and pastureland: animal wastes, manures, composted dead animals or process wastewater from any animal feeding operation.

2.06 **"Agricultural wastes"** means any waste material generated from any agricultural practice including, but not limited to, farming, irrigation, manure or fertilizer spreading, aquaculture, aquatic animal production, livestock and dairy operations. Agricultural wastes may include animal manure, crop residues, dead animals and any agricultural chemicals, fertilizers and pesticides which may find their way into surface and subsurface water.

2.07 **"Antidegradation Statement"** means any provision or policy that has as its basis the prevention of deterioration of water quality or designated uses.

2.08 **"Applicable effluent standards and limitations"** means all State, interstate and Federal standards and limitations to which a discharge or related activity, including the use or disposal of sludge, is subject under the Law or the Act including effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Act.

2.09 **"Aquaculture facility"** means any water system and associated infrastructure constructed or utilized to contain, hold and/or produce cultured aquatic stock.

2.10 **"Aquaculture project"** means a defined area of State waters which is managed for the maintenance or production of harvestable freshwater, estuarine or marine plants or animals, using discharges of pollutants into such defined area.

2.11 **"Aquatic animal production facility"** means any hatchery, fish farm, or similar system or facility and any associated infrastructure constructed or utilized to contain, hold and/or produce cultured aquatic animal stock.

2.12 **"Approved POTW Pretreatment Program"** or "Program" or "POTW Pretreatment Program" means a program administered by a POTW which has been approved by the United States Environmental Protection Agency.

2.13 **"As-built plans"** means any set of engineering drawings delineating the specific permitted facility as actually installed or constructed.

2.14 **"Average daily loading"** means the total discharge by weight during a calendar month divided by the number of days in the month that the production or commercial facility was operating. Where less than daily sampling is required, the daily average discharge shall be determined by the summation of all the measured daily discharges by weight divided by the number of days during the calendar month when the measurements were made.

2.15 **"Average monthly discharge"** or "daily average discharge" is the arithmetic mean of all daily discharges during a calendar month, calculated as the sum of all daily discharges sampled and/or measured during the

month divided by the number of daily discharges sampled or measured during such month.

2.16 **"Average monthly effluent limitation"** or **"daily average effluent limitation"** means the highest allowable average of daily discharges over a calendar month.

2.17 **"Best management practices"** or **"BMP's"** means schedules of activities, prohibitions of practices, maintenance procedures and other management practices or measures to prevent or reduce the discharge of pollutants. BMP's include but are not limited to: structural and nonstructural controls; treatment requirements; operating procedures and practices or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs can be applied before, during and after pollution generating activities to reduce or eliminate the introduction of pollutants into receiving waters.

2.18 **"Biological toxicity testing"** refers to the measurement of physiological responses of organisms and/or their systems to environmentally induced conditions.

2.19 **"Biosolids"** refers to the biomass or biological sludge generated or produced by biological wastewater treatment processes.

2.20 **"Board"** means the Environmental Appeals Board.

2.21 **"Bulk storage facility"** means any facility used for the express purpose of storage of 40,000 or more gallons of any hazardous material, petroleum product or liquid waste but shall not include Aboveground Storage Tanks as defined in 7 Del.C., Chapter 74A and the Delaware Regulations Governing Aboveground Storage Tanks.

2.22 **"Bulk transfer facility"** means any facility used for the express purpose of transfer of 20,000 gallons per day or more of any hazardous material, petroleum product, or liquid waste to or from any carrier such as, but not limited to, ships, barges, trains or trucks.

2.23 **"Bypass"** means the intentional diversion of wastes from any portion of a treatment facility.

2.24 **"Certification"** means the issuance of a written statement or document as required under §401 of the Act that any discharge into State waters will comply with the applicable provisions of §§301, 302, 303, 306 and 307 of the Act.

2.25 **"Cold water aquatic animals"** include, but are not limited to, the Salmonidae family of fish, e.g., trout and salmon.

2.26 **"Composite sample"** means a combination of individual samples obtained at specified intervals over a given time period, generally 24 hours.

In collecting a composite sample of a discharge other than a discharge of storm water or storm runoff (a non-storm water discharge), either: a) the volume of each individual sample is proportional to the discharge flow rate or b) the sampling interval is proportional to the discharge flow rate and the volume of each individual sample is

constant. For a continuous non-storm water discharge, a minimum of 24 individual grab samples shall be collected and combined to constitute a 24 hour composite sample. For intermittent non-storm water discharges 4 hours or more in duration, the number of individual grab samples collected and combined to constitute a composite sample shall at a minimum be equal to the duration of the discharge in hours but not less than 12. For intermittent non-storm water discharges of less than 4 hours, the minimum number of individual grab samples collected and combined to constitute a composite sample shall be equal to the duration of the discharge in hours times 3 but not less than 3 samples.

2.27 **"Concentrated animal feeding operation"** or "CAFO" means an animal feeding operation, feedlot or animal production facility that meets the criteria in Appendix B to 40 CFR Part 122 or which is designated as such by the Secretary in accordance with 40 CFR 122.23(c).

2.28 **"Concentrated aquatic animal production facility"** means a hatchery, fish farm, or other facility which contains, grows, or holds:

(1) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(i) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(ii) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(2) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff; or

(ii) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

2.29 **"Conservation practices and management measures"** means the basic components of a conservation waste management plan which apply the principles of agricultural engineering, economics, research, animal science and crop and soil sciences, as appropriate, to maximize the economic value of wastes, to minimize discharges of pollutants associated with and to minimize any environmental damage resulting from the activity.

2.30 **"Conservation waste management plan"** means a written document that outlines the site-specific conservation and management measures to be implemented and followed on the farm.

2.31 **"Construction"** means any placement, assembly, building or installation of equipment or facilities.

2.32 **"Continuous discharge"** means a discharge

which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

2.33 **"Daily discharge"** means the total discharge measured during a calendar day or any 24-hour period that reasonably represents the calendar day for sampling purposes. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of a pollutant discharged over a calendar day or the equivalent 24-hour period. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over a calendar day or the equivalent 24-hour period.

2.34 **"Daily maximum effluent limitation"** is the highest total mass of a pollutant allowed to be discharged during a calendar day or, in the case of a pollutant limited in terms other than mass, the highest average concentration or other measurement of the pollutant specified during the calendar day, or any 24-hour period that reasonably represents the calendar day for sampling purposes.

2.35 **"Degradation"** means any adverse change in water quality or designated uses.

2.36 **"Department"** means the State of Delaware Department of Natural Resources and Environmental Control.

2.37 **"Designated project area"** means the portion of State waters within which an owner plans to confine the cultivated species using a method or plan or operation which is expected to ensure that the aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

2.38 **"Designated uses"** means the categories of surface water uses as defined in the water quality standards.

2.39 **"Direct discharge"** means the "discharge of a pollutant".

2.40 **"Direct Responsible Charge"** or "DRC" means on-location accountability for, and on-location performance of, active daily operation (including Technical Supervision, Administrative Supervision, or Maintenance Supervision) for a wastewater facility, an operating shift of a system or a facility, or a major segment of a system or facility.

2.41 **"Discharge"** for the purposes of these regulations when used without qualification means the discharge of a pollutant.

2.42 **"Discharge of a pollutant"** means any addition of any pollutant, or combination of pollutants, to state waters or the contiguous zone, or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with Section 312 of the Act.

This definition includes additions of pollutants into State waters from:

(i) Surface runoff that is collected or channeled by man;

(ii) Discharges through pipes, sewers, or other conveyances which do not lead to a treatment works; and

(iii) Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

2.43 **"Domestic wastewater"** means the liquid and water-borne human and/or household type wastes derived from residential, industrial, institutional or commercial sources.

2.44 **"Draft permit"** means the document prepared under Section 6.12 of these regulations which incorporates the Secretary's tentative determinations with respect to any NPDES permit application or any request to modify, revoke and reissue or terminate a NPDES permit. The term, "draft permit", includes a notice of intent to deny a permit and a notice of intent to terminate a permit, as outlined in Section 6.52 of these regulations. The denial of a request to modify, to revoke and reissue or to terminate a permit is not a "draft permit", however.

2.45 **"Effluent limitations"** means any restriction imposed by the Secretary on the quantity, discharge rate and concentration of a pollutant discharged from a point source to State waters. Effluent limitations include, but are not limited to, standards of performance for new sources, best management practices or BMPs, effluent standards, discharge prohibitions, "zero discharge" standards and ocean discharge criteria.

2.46 **"Environmental Protection Agency"** ("EPA") means the United States Environmental Protection Agency.

2.47 **"Existing source"** means any source which is not a new source or a new discharger.

2.48 **"Existing uses"** means any use of State waters which has occurred, or which likely has occurred, or which the water quality at any time has been satisfactory to support, on or after November 28, 1975.

2.49 **"Facility"** means any building, any structure, any complex of buildings or structures, or any process, production equipment or machinery, which makes it possible for an activity to be conducted.

2.50 **"Facility plan"** means a report which the owner of a treatment works submits to the Department that consists of those necessary plans and studies directly relating to the construction of proposed sewage treatment facilities or additions to existing sewage treatment facilities where additional treatment capacity is proposed.

2.51 **"Feasible alternatives"** are those alternatives that are available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

2.52 **"Feedlot"** means a confined animal feeding operation or a poultry growing operation for meat, milk or

egg production, or for stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth is not sustained in the area of confinement.

2.53 **"Filtration"** means a mechanical or physical straining process whose principal action is the removal of undissolved matter and shall include, but not be limited to, the following: diatomaceous earth filter, microstrainer, sand, dual and multi-media beds, or other processes capable of equivalent treatment.

2.54 **"General NPDES permit"** means an authorization granted to a category of point source discharges pursuant to Section 9 of these regulations.

2.55 **"Grab sample"** is an individual sample collected in less than 15 minutes.

2.56 **"Groundwater"** means any water naturally found under the surface of the earth.

2.57 **"Hazardous material"** means any element or compound which when discharged onto land or into surface or groundwater, presents an imminent and substantial danger to public health and welfare, aquatic organisms, including but not limited to, fish, shellfish, terrestrial life, shorelines and beaches.

2.58 **"Indirect discharge"** means the discharge or introduction of pollutants from any nondomestic source into a municipal or publicly-owned treatment works.

2.59 **"Industrial User"** - means any industry, manufacturer or business whose liquid waste is discharged to a municipal or publicly owned treatment works; an industrial user is also an indirect discharger.

2.60 **"Industrial wastes"** means any liquid, gaseous, solid or other wastes or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

2.61 **"Intake pollutant"** means an amount of a pollutant that is present in State waters (including groundwater) at the time it is withdrawn from such waters by the discharger or other facility supplying the discharger with intake water. "Intake water" means the water used by a facility generally for cooling or process-related purposes from any source: surface water, groundwater, commercial purveyor or other sources.

2.62 **"Interstate agency"** means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by EPA under the Act.

2.63 **"Law"** means Title 7, Delaware Code Chapter 60.

2.64 **"Liquid waste"** means any sewage, industrial waste or other wastes or any combination thereof which may potentially alter the chemical, physical, biological or radiological integrity of surface and/or groundwater from its

natural state. The term, "liquid waste", does not mean storm runoff or storm water.

2.65 **"Load" or "loading"** means an amount of matter or thermal energy that is introduced into a receiving water; as a verb, "load or loading" means to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

2.66 **"Load allocation" or "LA"** means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending upon the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

2.67 **"Loading capacity"** means the greatest amount of loading that a water can receive without violating water quality standards.

2.68 **"Log sorting and log storage facilities"** means facilities whose discharges result from the holding of unprocessed wood, i.e., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

2.69 **"Maximum instantaneous concentration" or "MIC"** is the highest allowable measured concentration of a pollutant, obtained by analyzing a grab sample of the discharge.

2.70 **"Medical wastes"** means isolation wastes; infectious agents; human blood and blood products; pathological wastes; sharps; body parts; contaminated bedding; surgical wastes and potentially contaminated laboratory wastes; dialysis wastes and other disposable medical equipment and material.

2.71 **"Method Detection Limit" or "MDL"** means the lowest concentration of a substance which can be measured with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

2.72 **"Minimum analytical level" or "MAL"** means 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. When there is insufficient interlaboratory study data, the "MAL" may be determined through the use of a multiplier of 5 to 10 times the method detection level or "MDL".

2.73 **"Mitigation"** means the following sequence: (a) avoiding the impact altogether by not taking a certain action or part of an action, (b) minimizing impacts by limiting the magnitude of the action to the minimum necessary to effectuate the project need, and (c) in those

cases where impacts cannot be avoided or where minimization has occurred, compensating for the affected resource.

2.74 **"Municipality"** means a city, town, county, district, association, or other political subdivision created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of the Act.

2.75 **"NPDES"** ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to Sections 307, 402, 318, and 405 of the Act.

2.76 **"NPDES application"** means the forms recognized nationally, duly promulgated by EPA pursuant to the Act, including any modifications to such forms required by the Secretary, for application for a NPDES permit.

2.77 **"NPDES Discharge Monitoring Report" ("DMR")** means any EPA approved form, used to summarize and report the results of the permittee's self-monitoring activities.

2.78 **"NPDES form"** means any issued NPDES permit and any uniform national form developed for use in the NPDES program, including any addition to such form required by the Secretary, and prescribed in regulations promulgated by EPA including the NPDES application and the NPDES Discharge Monitoring Report (DMR) forms.

2.79 **"NPDES permit"** means any permit authorizing the potential or actual point source discharge of pollutants to State waters, under prescribed conditions, pursuant to Section 6 of these regulations.

2.80 **"National Pretreatment Standard" or "Pretreatment Standard"** means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act, which applies to industrial users.

2.81 **"New discharger"** means any building, structure, facility or installation:

- (i) Which prior to August 13, 1979, had not discharged pollutants;
- (ii) Which had never received a final effective NPDES permit for discharges at that site;
- (iii) From which there is or may be a new or additional discharge of pollutants;
- (iv) Which is an indirect discharger that commences a discharge to State waters; and
- (v) Which does not fall within the definition of "new source".

2.82 **"New source"** means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which

commences:

(i) After promulgation of standards of performance under Section 306 of the Act which are applicable to such source; or

(ii) After proposal of standards of performance under Section 306 of the Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

2.83 **"Non-contact cooling water"** is that which is contained within a leak-free system, i.e. has no contact with any gas, liquid or solid other than the container used for transport.

2.84 **"Normal corrosion"** refers to the 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 through August 29, 2000, or, for applications not specifically addressed in the above reference, such other reliable data.

2.85 **"Normal erosion"** is 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.)

2.86 **"Nuisance condition"** is any condition that, as a result of pollutant addition to a surface water, causes unreasonable interference with the designated uses of the waters or the uses of the adjoining land areas.

2.87 **"Nutrient management plan"** means a plan or program to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

2.88 **"Nutrient removal"** means any method of treatment specifically designed to remove nutrients including, but not limited to, phosphorus, nitrogen or carbon.

2.89 **"Nutrients"** means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

2.90 **"Operations and Maintenance Manual"** means a written document setting forth a step by step procedure for operating and maintaining the treatment facility.

2.91 **"Operator"** means any person employed or appointed by any owner, and who is designated by such owner to be the person controlling the operations of the treatment works, including direct actions, decisions or evaluations which affect the quality of the discharge, and

whose duties include testing or evaluation to control treatment works operations.

2.92 **"Other wastes"** means decayed wood, sawdust, shavings, bark, sand, lime, garbage, refuse, cinders, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution in any State waters.

2.93 **"Owner"** means the State or any of its political subdivisions, including, but not limited to, sewer or sanitation district commissioners and authorities; any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country; or any person or group of persons acting individually or as a group, and shall include any permittee under a NPDES permit. For the purposes of this regulation, "owner" shall also mean any responsible corporate officer so designated in the permit application. "Owner" may also mean an industrial user as identified or controlled by the requirements of Section 6, Part VII.

2.94 **"Permit"** means the authorization, license or equivalent control document issued by the Secretary or his duly authorized representative to implement the requirements of these regulations.

2.95 **"Permittee"** means any person to whom a permit has been issued by the Secretary.

2.96 **"Person"** means any individual, trust, firm, corporation (including a government corporation), partnership, association, institution, enterprise, federal agency, state, municipality, commission, agency, political subdivision of a state or any interstate body, or an agent or employee thereof.

2.97 **"Pipeline"** means any pipe or system of pipes including, but not limited to, pump stations and other appurtenances utilized for the conveyance of any liquid, gas or solid.

2.98 **"Point source"** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

2.99 **"Pollutant"** means any substance, radioactive material, or waste heat which causes or contributes to, or may cause or contribute to, pollution. The term includes dredged spoil and other dredged materials, fill material, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, product chemicals, and industrial, municipal, agricultural and other wastes discharged into water.

The term, "pollutant", does not mean: "sewage

from vessels" within the meaning of Section 312 of the Act; or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the Secretary, and if the Secretary determines that such injection or disposal will not result in the degradation of ground or surface water resources. This definition encompasses drinking water contaminants that are regulated under Section 1412 of the Safe Drinking Water Act and may be discharged to State waters that are source waters of one or more public water systems. For public water systems served by surface water, source water is any water reaching the intake.

2.100 **"Pollution" or "Water Pollution"** means man-made or human-induced alteration of the physical, chemical, biological or radiological properties of any state waters as will create or is likely to create a nuisance or render such waters:

(i) Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life;

(ii) Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

(iii) Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses;

For the purposes of these regulations, the following are "water pollution":

(A) An alteration of the physical, chemical, or biological properties of State waters or a discharge of sewage, industrial wastes, other wastes or materials to State waters by any person which by itself is not sufficient to cause water pollution but which in combination with such alteration or discharge to State waters by other persons is sufficient to cause water pollution,

(B) The discharge of untreated sewage by any person into State waters, and

(C) The discharge of any pollutant, contaminant or substance that causes or contributes to the contravention of water quality standards duly established by the Secretary.

2.101 **"Pollution Control Strategy" or "PCS"** means a plan that specifies the necessary pollutant load reductions and actions that must be taken through voluntary and regulatory means to ensure the resultant pollutant loadings are less than or equal to the "total maximum daily load" or "TMDL" for a given waterbody. Pollution trading between different sources of pollution, geographic targeting and pollution prevention may all be considered as part of a "Pollution Control Strategy" or "PCS".

2.102 **"Pollution prevention"** means any practice which results in a lesser quantity of emissions released or discharged prior to out-of-process recycling, treatment or

control, as measured on a per-unit-of-production basis.

2.103 **"Ponds"** means all natural and/or man-made lakes or other bodies of water fed directly by springs, groundwater, tidal or non-tidal streams.

2.104 **"Pretreatment"** means the reduction or elimination of pollutants, or altering the nature of the pollutants prior to discharging or otherwise introducing such pollutants to a treatment works. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means.

2.105 **"Pretreatment program"** means the legal, technical and administrative framework for effectively controlling the introduction of pollutants into a publicly owned treatment works (POTW).

2.106 **"Pretreatment requirement"** means any substantive or procedural condition, obligation or requirement related to pretreatment, other than a national pretreatment standard, imposed on any industrial user.

2.107 **"Pretreatment standard"** means any pollutant discharge limitation promulgated by the EPA in accordance with §307(b) and (c) of the Act, or by the Secretary, which applies to industrial users. This term includes the prohibitions and discharge limitations outlined in Section 6.71 of these regulations.

2.108 **"Process wastewater"** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

2.109 **"Professional engineer"** means a person who has been duly registered as a Professional Engineer by the Council of the Delaware Association of Professional Engineers.

2.110 **"Public Hearing"** means any fact-finding proceeding pursuant to §6006 of the Law, held by the Secretary to afford interested persons an opportunity to submit factual data or evidence, views, and arguments to the Secretary.

2.111 **"Publicly owned treatment works" ("POTW")** means a treatment works as defined herein, which is owned by the State or a municipality, city, town, county, district or other public body created by or pursuant to the laws of the State, including any sewers, pipes or other conveyances that connect to such treatment works.

2.112 **"Radioactive Material"** means those radioactive materials not encompassed in the definitions of source, byproduct or special nuclear materials in the Atomic Energy Act of 1954, as amended through August 29, 2000.

2.113 **"Residues" or "residuals"** means the solids, sludges, and precipitates separated from or created by the unit processes of a treatment works.

2.114 **"Rock crushing and gravel washing facilities"** means facilities which process crushed and broken stone, gravel and riprap.

2.115 "**Schedule of compliance**" means a listing of necessary measures with target dates, including an enforceable sequence of interim requirements, actions or operations, leading to compliance with an effluent limitation, other limitation or requirement, prohibition, regulation, performance standard, or water quality standard.

2.116 "**Secondary treatment**" means any combination of unit processes that will consistently remove 85% or more of the organic and suspended material in domestic sewage and produce an effluent of sufficient quality to satisfy the requirements of Section 7 of these regulations.

2.117 "**Secretary**" means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

2.118 "**Severe property damage**" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

2.119 "**Sewage**" means the water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments or other places together with such groundwater infiltration, subsurface water, storm inflow, admixture of industrial wastes, or other wastes as may be present.

2.120 "**Sewage from vessels**" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of the Act.

2.121 "**Sewage sludge**" means any solid, semi-solid or liquid residue removed during the treatment of municipal wastewater or domestic sewage, including but not limited to, solids removed during primary, secondary or advanced wastewater treatment, scum, septage, portable toilet pumpings and sewage sludge products.

2.122 "**Significant industrial user**" means that (industrial user) which reasonably has the potential to adversely affect a POTW's operation; that which reasonably has the potential for violating any pretreatment standard or requirement; that which discharges an average of 25,000 gallons per day or more of process wastewater to a POTW; that which discharges process wastewater in such an amount or strength that constitutes 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; that which is designated as such by the POTW; that which is subject to federal categorical pretreatment standards as outlined in 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N.

2.123 "**Silvicultural point source**" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage

facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into State waters.

2.124 "**Site**" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

2.125 "**Sludge**" means the accumulated semi-liquid suspension, settled solids, or dried residue of these solids removed by any surface water or groundwater treatment facility or any liquid waste treatment facility or works, whether or not such solids have undergone treatment.

2.126 "**Source**" means any building, structure, facility, installation or establishment from which there is or may be a discharge of pollutants.

2.127 "**State**" means the State of Delaware.

2.128 "**State waters**" or "**Waters of the State**" means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction 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).

Waste and stormwater treatment systems including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Act (other than cooling ponds which otherwise meet the requirements of subsection (1) of this definition) are not "State waters" or "Waters of the State".

2.129 "**Stream**" means the natural watercourse flowing in a defined bed or channel with bank and sides having permanent sources of supply, uniform or interrupted, temporarily diminished or suspended, but usually containing running water.

2.130 "**Surface water**" means water occurring generally on the surface of the earth.

2.131 "**Technology-based**" generally refers to those requirements or limitations, established by these regulations or in accordance with §301 of the Act, that reflect the achievable performance or pollutant removal capability of the technology, treatment process or equipment employed.

2.132 "**Total maximum daily load**" or "**TMDL**" means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint and natural background

sources and still allow attainment or maintenance of the applicable narrative and numerical water quality standards. A "TMDL" is the sum of the individual wasteload allocations or WLAs for point sources and load allocations or LAs for nonpoint sources of pollution and natural background. A "TMDL" may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a "TMDL" attempts to match the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

2.133 **"Toxic Pollutant"** means any pollutant listed as toxic in Delaware's Surface Water Quality Standards.

2.134 **"Treatment works"** means any devices and systems used in the storage, treatment, recycling, and/or reclamation of sewage or industrial wastes, or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances, extension, improvement, remodeling, additions, and alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; however, "treatment facilities" shall include only those mechanical devices necessary for the transmission and treatment of wastes (e.g., unit treatment processes and pump stations).

2.135 **"Upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. The basis for specific effluent limitations can be found in the fact sheet, as provided for in Section 6.18. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2.136 **"Variance"** means a permitted deviation from an established rule, regulation, plan, standard or procedure. With respect to the NPDES program, it means any mechanism or provision under Sections 301 or 316 of the Act, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements or time deadlines of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors, the establishment of alternative discharge limitations, treatment requirements or control measures pursuant to Sections 301(c), 301(g), 301(h) or 316(a) of the Act, or extensions of compliance deadlines pursuant to Sections 301(i) or 301(k) of the Act, where appropriate.

2.137 **"Warm water aquatic animals"** include, but are not limited to, the Ameiuridae, Centrarchidae, and Cyprinidae families of fish, e.g., respectively catfish,

sunfish, and minnows.

2.138 **"Wasteload allocation"** or **"WLA"** means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

2.139 **"Water quality"** means the physical, chemical and biological characteristics of water with respect to its suitability for a particular use.

2.140 **"Water quality-based"** generally refers to those requirements or limitations designed to achieve a given water quality objective, e.g. compliance with any applicable water quality standard, without regard to treatment technology.

2.141 **"Water quality criterion"** is 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.

2.142 **"Water quality standard"** means any rule or limit established by the Secretary which consists of a designated use or uses for waters of the State and the water quality criteria for such waters based upon such designated uses.

2.143 **"Wetlands"** are those areas that are inundated or saturated by surface or groundwater 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. Wetland areas are as delineated under and through 7 Del.C. Chapter 66 and the "Corps of Engineers Wetlands Delineation Manual", dated January, 1987.

2.144 **"Wetlands creation"** means the establishment, through human intervention, of wetlands at a site where wetlands did not historically exist.

2.145 **"Wetlands enhancement"** means the net increase, through human intervention, of wetland function or value within an existing wetland.

2.146 **"Wetlands restoration"** means the reestablishment, through human intervention, of wetlands at a site where wetlands historically existed but were subsequently lost.

2.147 **"Whole effluent toxicity"** means the aggregate toxic effect of an effluent or discharge measured directly by a toxicity test.

2.148 **"Work plan"** means a list of all necessary actions and corresponding time schedule which is included in the facility plan or operations and needs review to ensure that an owner's sewage system maintains effluent limits.

DIVISION OF WATER RESOURCES

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

REGISTER NOTICE

Total Maximum Daily Loads (TMDLs) for Little Assawoman Bay Watershed, Delaware

1.0 Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulation for nitrogen and for phosphorous for the Little Assawoman Bay Watershed. A TMDL sets limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

2.0 Possible Terms of the Agency Action

Following adoption of the proposed Total Maximum Daily Load for the Little Assawoman Bay, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with the Inland Bays Tributary Action Team, other stakeholders, and the public.

3.0 Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 *et. seq.*, as amended.

4.0 Other Legislation That May be Impacted

None

5.0 Notice of Public Comment

A public hearing will be held on Tuesday, November 30, 2004, at 3:00 p.m., at Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, Delaware. The hearing record will remain open until 5:00 p.m., November 30, 2004. Please bring written comments to the hearing or send them to Lisa A. Vest, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Marianne Brady, (302)-739-4590; facsimile: (302) 739-6140; email: (marianne.brady@state.de.us) by 4:30 p.m., November 29, 2004.

Additional information and supporting technical

documents may be obtained by contacting Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 820, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, email: (hassan.mirsajadi@state.de.us)

6.0 Prepared By:

Hassan Mirsajadi, Watershed Assessment Branch, 739-4590

Total Maximum Daily Loads (TMDLs) for Little Assawoman Bay Watershed, Delaware

1.0 Introduction and Background

1.1 Intensive water quality monitoring performed by the State of Delaware, the federal government, various university and private researchers, and citizen monitoring groups has shown that surface waters of the Inland Bays Watershed including the Little Assawoman Bay are highly enriched with the nutrients nitrogen and phosphorous. Although nutrients are essential elements for both plants and animals, their presence in excessive amounts cause undesirable conditions. Symptoms of nutrient enrichment in the Inland Bays have included excessive macroalgae growth (sea lettuce and other species), phytoplankton blooms (some potentially toxic), large daily swings in dissolved oxygen levels, loss of Submerged Aquatic Vegetation (SAV), and fish kills. These symptoms threaten the future of the Inland Bays - very significant natural, ecological, and recreational resources of the State - and may result in adverse impacts to the local and State economies through reduced tourism, a decline in property values, and lost revenues. Hence, excessive nutrients pose a significant threat to the health and well being of people, other animals, and plants living within the watershed.

1.2 A reduction in the amount of nitrogen and phosphorous reaching the Inland Bays is necessary to reverse the undesirable effects. These nutrients enter the Bays and its tributaries and ponds from several sources including point sources, nonpoint sources, and from the atmosphere. Point sources of nutrients are end-of-pipe discharges coming from municipal and industrial wastewater treatment plants and other industrial uses. Nonpoint sources of nutrients include runoff from agricultural and urban areas, seepage from septic tanks, and ground water discharges. Atmospheric deposition comes from both local and regional sources, such as motor vehicle exhausts and emissions from power plants that burn fossil fuels.

1.3 Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality standards and to develop Total Maximum Daily Loads (TMDLs) for

pollutants or stressors causing the impacts. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

1.4 The Delaware Department of Natural Resources and Environmental Control (DNREC) listed the Little Assawoman Bay and several tributaries and ponds of the Inland Bays on the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for nitrogen and phosphorous.

2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Little Assawoman Bay, Delaware

Article 1. The nonpoint source nitrogen load in the Little Assawoman Bay Watershed shall be reduced by 40 percent. For the 3-year period of 1998 through 2000, this would result in reduction of total nitrogen load in the Watershed from 594 pounds per day to 357 pounds per day.

Article 2. The nonpoint source phosphorous load in the Little Assawoman Bay Watershed shall be reduced by 40 percent. For the 3-year period of 1998 through 2000, this would result in reduction of total phosphorous load in the Watershed from 49 pounds per day to 30 pounds per day.

Article 3. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Inland Bays Tributary Action Team, other stakeholders, and the public.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

BAIL ENFORCEMENT AGENTS

Statutory Authority: 24 Delaware Code,
Section 5404(a) (24 **Del.C.** §5404(a))

PUBLIC NOTICE

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 Del C Section 5404(a) proposes to amend Adopted Rule 1.0 - Licensing. This amendment will clarify items and fees that a Bail Enforcement Agent will receive when applying or renewing. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit

them in writing, by November 8, 2004, to Delaware State Police, Detective Licensing, P.O. BOX 430, DOVER, DE, 19903.

Bounty Hunter/Bail Enforcement Agents

Preamble

These Rules & Regulations are promulgated pursuant to 24 **Del.C.** §5504(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 55 to the Division of State Police.

1.0 Licensing

1.1 Any individual applying for a bail enforcement agent ID card under 24 **Del.C.** Ch. 55 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony; and

1.1.2 Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and

1.1.3 Must not have been convicted of any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Detective Licensing Section and

1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25th birthday.

1.2 An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.

1.3 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must also meet the following qualifications:

1.3.1 Must be at least 21 years of age; and

1.3.2 Must complete the training qualifications set forth in Section 6.0; and

1.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.

1.4 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must submit the following for approval:

1.4.1 A fee of ~~\$25~~ \$75 for a four (4) year ID card which shall expire and be renewable on the 4th anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4th year; and

1.4.2 Any and all applications required by the

Detective Licensing Section; and

1.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.

1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.

1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement agent.

1.9 A fee of \$50 shall be for the renewal of the ID card and license, which shall be valid for another four (4) years.

7 DE Reg. 1782 (6/1/04)

2.0 Badges, Patches, Advertisements

2.1 No individual licensed under 24 Del.C. Ch. 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.

2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

3.0 Use Of Animals

3.1 The use of animals is prohibited in the performance of any bail enforcement agent activity.

4.0 Firearms Policy

4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved

40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.

4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

4.3.1 9mm

4.3.2 .357

4.3.3 .38

4.3.4 .40

4.3.5 .45

4.4 All ammunition will be factory fresh (no re-loads).

4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

5.0 Nightstick, PR24, Mace, Peppergas, Chemical Spray, And Handcuffs

5.1 To carry the above weapons/items a bail enforcement agent must have completed training by a Detective Licensing Section approved instructor, on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Detective Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

7 DE Reg. 1782 (6/1/04)

6.0 Training

6.1 All bail enforcement agents licensed under Title 24 Chapter 55 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.

6.2 The training must be completed prior to obtaining a license.

7 DE Reg. 1782 (6/1/04)

7.0 Notification Of Apprehensions

7.1 All bail enforcement agents licensed under 24 Del.C. Ch. 55 are required to notify the police emergency

911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

8.0 Notification Of Arrest

8.1 Anyone licensed under 24 **Del.C.** Ch. 55 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.

9.0 Suspensions And Revocations

9.1 The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that violates the Chapter or the promulgated Rules & Regulations.

9.2 The Detective Licensing Section may suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.

9.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of Safety and Homeland Security.

9.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.

5 DE Reg. 1523 (1/1/02)

7 DE Reg. 1782 (6/1/04)

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF MASSAGE AND BODYWORK**
Statutory Authority: 24 Del.C. §5305(1)
24 DE Admin. Code 5305(1)

ORDER

The State Board of Massage and Bodywork held a public hearing after due notice to consider changes to its Rules and Regulations which was published in the Delaware *Register of Regulations* in **8 DE Reg. 390 (9/01/04)** and in two Delaware newspapers or general circulation. The Board considered the proposed changes at its regular meeting following the public hearing.

Summary Of The Evidence And Information

There was no written comment. Verbal comment is summarized below.

Lora Bryner asked the Board whether the modalities in Rule 1.5 require a license since they are within the 25% category.

Findings Of Fact Based On The Evidence And Information

The items in the 25% category are not regulated by the Board. The Board finds that the changes proposed clarify the statutory requirements and facilitate the implementation of its provisions.

Decision

The Board hereby adopts the proposed changes to the Rules and Regulations this 7th day of October, 2004.

Text, Citation And Effective Date

The text of the new provisions remain as published in the *Register of Regulations* in **8 DE Reg. 390 (9/01/04)** and shall be effective 10 days following publication of this Decision in the *Register of Regulations*.

STATE BOARD OF MASSAGE AND BODYWORK

Vivian Cebrick, President
Daniel Stokes, Vice President
Phyllis Mikell
Suzie Stehle
Clayton Yocum
Mary Jo Verdery

5300 Board of Massage and Bodywork

1.0 Definitions and General Definitions

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

1.2 The term a "~~400~~ 300 - hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a ~~400~~ 300 hour course which includes ~~hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork~~ no less than sixty hours of anatomy and physiology, one hundred-forty hours of theory and technique and one hundred hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(a)(1).

1.2.1 The ~~400~~ 300 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Rule ~~4-2-1.4~~. The entire ~~400~~ 300 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

1.3 The term a "200 hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(b) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 200 hour course which includes no less than fifty hours of anatomy and physiology, one hundred-ten hours of theory and technique, twenty- five hours of ethics, law, and contraindications and fifteen hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(b).

1.3 ~~4~~ The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

- Acupressure
- Chair Massage
- Craniosacral Therapy
- Deep Tissue Massage Therapy
- Healing Touch

- Joint Mobilization
- Lymph Drainage Therapy
- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy
- Neuromuscular Therapy
- Orthobionomy
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

1.4 ~~5~~ The practice of the following modalities does not constitute the "practice of massage and bodywork":

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

3 DE Reg. 1516 (5/1/00)

4 DE Reg. 1245 (2/1/01)

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist

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

2.2 In addition to the application and materials described in 2.1 of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3.0 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

2.3.1 The Board may, in its discretion, approve

applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

2.4 Renewal. Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule ~~6~~ 7.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

4 DE Reg. 1245 (2/1/01)

3.0 Examination

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

4.0 Application for Certification as Massage Technician

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

4.2 In addition to the application and materials described in 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 Del.C. §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.2.1 An applicant for a temporary massage technician certification, in addition to the application and materials described in 4.1 of this Rule, shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 Del.C. §5309(b) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in 4.1 and 4.2 of this Rule are submitted to the Board's office.

4.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule ~~6.0-7.0~~ and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period. Temporary massage technician certificates are valid for no more than one (1) year and may not be renewed or reissued pursuant to the provision of 24 Del.C. §5309(b).

3 DE Reg. 1516 (5/1/00)

4 DE Reg. 1245 (2/1/01)

5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician, excluding temporary massage technician certificates, may be reinstated within one (1) year after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation, and submission of documentation demonstrating compliance with the continuing education requirements of Rule 7.0.

5 DE Reg. 827 (10/01/01)

6.0 Inactive Status

6.1 A licensee asking to have his or her license placed on inactive status must notify the Board of his/her intention to do so in writing prior to the expiration of his/her current license. Holders of temporary massage technician certificates are not eligible for inactive status.

6.2 A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation demonstrating compliance with the continuing education hours required by Rule 7.0.

6 7.0 Continuing Education

6 7.1 *Hours required.* For license or certification periods beginning September 1, 2004 and thereafter, each

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

§ 7.1.1 Calculation of Hours. For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

§ 7.1.2 If during a licensing period an individual certified by the Board as a massage technician is issued a license as a massage and bodywork therapist, the continuing education requirement for that licensing period is as follows:

§ 7.1.2.1 If the license is issued more than twelve (12) months prior to the next renewal date, the licensee shall complete twenty-four (24) hours of acceptable continuing education during the licensing period.

§ 7.1.2.2 If the license is issued less than twelve (12) months prior to the next renewal date, the licensee shall complete twelve (12) hours of acceptable continuing education during the licensing period.

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

§ 7.3 Content.

§ 7.3.1 Except as provided in Rule ~~6~~7.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge. For each biennial licensing period, massage therapists must complete at least eighteen of the required twenty-four hours of continuing education hours in supervised in-class hands-on study of the "practice of massage and bodywork" as defined in Rule 1.34. For each biennial licensing period, massage technicians must complete at least nine of the required twelve hours of continuing education hours in supervised in-class hands-on study of the "practice of massage and bodywork" as defined in Rule 1.34.

§ 7.3.2 For each biennial licensing period, massage therapists may complete (but are not required to complete) up to six hours of the required twenty-four hours of continuing education hours in any combination of the areas and methods listed in Rules ~~6~~7.3.2.1 through ~~6~~7.3.2.5. In each biennial licensing period, massage technicians may complete (but are not required to complete) up to three hours of the required twelve hours of continuing education hours in any combination of the areas and methods listed in Rules ~~6~~7.3.2.1 through ~~6-3-2-5~~7.3.2.6.

§ 7.3.2.1 Courses in modalities such as are listed in Rule 1.45, which are modalities other than in the practice of massage and bodywork

§ 7.3.2.2 Personal growth and self-improvement courses

§ 7.3.2.3 Business Management Courses

§ 7.3.2.4 Courses taught by correspondence or mail

§ 7.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer.

§ 7.3.2.6 Courses in anatomy or physiology

§ 7.4 Board approval.

~~6.4.1 "Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:~~

~~6-7.4.1.1 NCBTMB~~

~~6-7.4.1.2 American Massage Therapy Association~~

~~6-7.4.1.3 Association of Oriental Bodywork Therapists of America~~

~~6-7.4.1.4 Association of Bodywork and Massage Practitioners~~

~~6-7.4.1.5 Delaware Nurses Association~~

~~6.4.2~~ 7.4.1 Other All continuing education must be pre-approved by the Board. ~~e~~Continuing education programs or providers ~~may~~ must apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

~~6.4.3~~ 7.4.2 Self-directed activity: The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the

anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 7.4.3 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6 7.3.2.

6 7.5 Reporting.

6 7.5.1 For license or certification periods beginning September 1, 20004 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6 7.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6 5.3 ~~If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6 7.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.~~

6 7.6 Hardship. A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

7.7 Continuing Education Requirements for Reinstatement of a Lapsed License. Unless extended by the Board for hardship as defined in Rule 7.6, and subject to the one (1) year limitation set forth in Rule 5.0, a massage therapist applying for reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty-four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of application for reinstatement. A massage technician applying for reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of application for reinstatement. Continuing education hours required for reinstatement of a lapsed license may not be credited towards the hours required for renewal in any other licensing period.

7.7.1 A massage therapist who has let his/her license lapse for more than one (1) year and is ineligible for reinstatement and therefore required to submit a new application shall not be permitted to circumvent continuing education requirements. The massage therapist must provide to the Board adequate proof of the satisfactory completion of twenty-four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the new application. A massage technician who has let his/her license lapse for more than one (1) year and is ineligible for reinstatement and therefore required to submit a new application shall not be permitted to circumvent continuing education requirements. The massage technician must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the new application. Continuing education hours required to be filed with a new application may not be credited towards the hours required for renewal in any other licensing period.

7.8 Continuing Education Requirements for Licensees Returning from Inactive Status. Unless extended by the Board for hardship as defined in Rule 7.6, a massage therapist returning from inactive status must provide notice to the Board as set forth in Rule 6.2 and must provide to the Board adequate proof of the satisfactory completion of twenty-four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the notice to return to active. A massage technician returning from inactive status must provide notice to the Board as set forth in Rule 6.2 and must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the notice to return to

active status. Continuing education hours required to return to active status may not be credited towards the hours required for renewal in any other licensing period.

3 DE Reg. 1516 (5/1/00)

4 DE Reg. 1245 (2/1/01)

4 DE Reg. 1944 (6/1/01)

5 DE Reg. 1409 (1/1/02)

7 DE Reg. 40 (7/1/03)

7 8.0 Scope of Practice

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

8 2.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

§ 2.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and

complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

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

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

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

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

in addition to the administrative costs associated with the Voluntary Treatment Option.

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

§ 9.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

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

§ 9.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

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

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

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

§ 9.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10005 (3 Del.C. §10005)

ORDER

Pursuant to 29 *Del.C.* §10113(b) and 3 *Del.C.* §10027, the Delaware Harness Racing Commission ("the Commission") hereby issues this Order adopting a new Commission Rule 8.8; and,

Whereas, the General Assembly passed House Bill No. 282, 74 *Del. Laws* c. 236 (2004) which amended 28 *Del.C.* §706 and was signed by Governor Ruth Ann Minner on May 17, 2004; and,

Whereas, the enactment of House Bill No. 282 requires the Commission to amend its Regulations to conform to the provisions of the new law amending 28 *Del.C.* §706; and,

Whereas, the amendment to the Commission Regulations is required to make them consistent with a change in basic law and does not otherwise alter the substance of the regulations and is therefore exempt, under 29 *Del.C.* §10113(b)(5), from the standard notice and publication requirements;

IT IS SO ORDERED this 19th day of October, 2004:

1. The Commission finds that the new Rule 8.8 on Prohibited Substances Protests and Testing tracks the provisions of the amended version of 28 *Del.C.* §706. The new Rule 8.8.1 provides the procedure and requirements for Prohibited Substances Protests and requests for a "super test." Rule 8.8.2 provides the requirements and procedure for routine post race testing.

2. The Commission after consideration and discussion has adopted the amendment adopting Rule 8.8. A copy of the adopted Rule 8.8 is attached as Exhibit #1 and incorporated herein.

3. This Order is effective immediately and the Commission will be submitted to the *Register of Regulations* for publication.

Beth Steele, Chair
Robert Everett, Commissioner
Mary Ann Lambertson, Commissioner
George Staats, Commissioner
Kenneth Williamson, Commissioner

8.8 Prohibited Substances Protests; Testing

8.8.1 Protest-Request for Super Test

8.8.1.1 If a licensed owner, trainer, driver, or claimant has a reasonable belief that a competing or claimed horse has, or may have an unfair competitive advantage due

to a violation of the Commission Rules, that owner, trainer, driver, or claimant may file a "Prohibited Substances Protest" with the Commission.

8.8.1.2 A "Prohibited Substances Protest" empowers the owner, trainer, driver, or claimant to request that any horse or horses he or she competes against or claims in a specified race have a blood and urine sample collected and then tested at an official Association of Racing Commissioners International (ARCI) approved laboratory of his or her choice. The designated laboratory shall employ state-of-the-art testing methods when testing these protested samples, which shall include, but not be limited to, Enzyme-Linked Immunosorbent Assay (ELISA), Thin Layer Chromatography (TLC), Gas Chromatography Mass Spectrometry (GCM-S), Liquid Chromatography Mass Spectrometry (LCMSMS), and Total Carbon Dioxide (TCO2) tests.

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

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

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

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

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

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

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

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

designated ARCI laboratory that has agreed to accept split samples from the Commission.

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

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

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

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

8.8.2 Routine Post Race Testing

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

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

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

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

8.8.3 This Rule enacts the provisions of 74 Del. Laws c. 236 (2004) which amended 28 Del.C. § 706 in its

entirety, and this Rule shall apply in the event these provisions conflict with or are otherwise inconsistent with any other Commission Rule.

Administrative Code of Regulations for the Department of Education.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(e) (14 Del.C. §122(e))
14 DE Admin. Code 705

REGULATORY IMPLEMENTING ORDER

705 Training Camp and Special Duty in the National Guard and/or Reserves

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 705 Training Camp and Special Duty in the National Guard and/or Reserves in order to clarify the language and to better reflect the intent of the statute including changing the title of the regulation.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 17, 2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 705 in order to clarify the language and to better reflect the intent of the statute including changing the title of the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 705. Therefore, pursuant to 14 Del.C. Ch.13, 14 DE Admin. Code 705 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 705 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 705 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States in the

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. Ch. 13 on October 4, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 4th day of October 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

~~705 Training Camp and Special Duty in the National Guard and/or Reserves~~

~~1.0 Leave for Training Camp and Special Duty in the National Guard and/or Reserves~~

~~1.1 Any permanent and full-time employee who is a member of the National Guard or any reserve component of the Armed Forces of the United States and who is ordered to attend training camp or to perform special duty not in excess of fifteen (15) days in any calendar year shall be allowed leave with pay for attending such training sessions or performing such special duty. Leave for teachers shall apply only if the training is with the individual's unit.~~

~~1.2 Such military training or special duty leaves shall not be deducted from vacation leave or in any other way result in loss of privileges or compensation to said employee.~~

~~1.3 Employees called to temporary military training or special duty shall file a request for military leave with the secretary of the local board at least two weeks prior to their leave, along with a copy of the official orders summoning them to military service.~~

~~(See 29 Del.C. §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees)~~

~~See 3 DE Reg. 631 (11/1/99)~~

705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

1.0 Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the Delaware Code, on a prorated basis in any calendar year.

1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result

in loss of privileges or compensation to said employee.

1.2 Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.

(Non-regulatory Note: See 29 Del.C. §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees)

REGULATORY IMPLEMENTING ORDER

706 Credit for Experience for Full-Time Service in the Armed Forces

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 706 Credit for Experience for Full Time Service in the Armed Forces in order to clarify the language and to better reflect the intent of the statute including changing the title of the regulation.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 17, 2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 706 in order to clarify the language and to better reflect the intent of the statute including changing the title of the regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 706. Therefore, pursuant to 14 **Del.C.** Ch.13, 14 **DE Admin. Code** attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 706 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 706 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 706 Credit for Experience for Full-Time Active Duty Service in the Armed Services of the United States in the *Administrative*

Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch.13 on October 4, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 4th day of October 2004.
 DEPARTMENT OF EDUCATION
 Valerie A. Woodruff, Secretary of Education

~~**706 Credit for Experience for Full-Time Service in the Armed Forces**~~

~~1.0 Credit for Experience for service in the armed forces shall count for full time active duty, not in excess of six (6) years in the Armed Services of the United States, provided that the individual became a teacher, principal, superintendent, or other administrative employee in Delaware within five (5) years after completion of a tour of duty or within five (5) years after his completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of a tour of duty. Included in the six (6) years will be any instruction in Military Science given during years of enlistment.~~

~~1.1 Credit for service in the armed forces shall be calculated as follows: One year of experience shall be allowed for each year of service. For purposes of this section, 183 days in any calendar year shall constitute one year of experience, but not more than 1 year of experience may be credited for any 1 calendar year, except that a combined total of 91 days of service and employment in any of the positions identified above during any one school year will count as a year of experience.~~

~~(See 14 **Del.C.** §§1312(a) and 1327 Leave of Absence for Persons in Military Service).~~

706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States

1.0 Credit for Experience for full time active duty service, not in excess of six (6) years in the armed services of the United States, shall be granted provided the individual became a teacher, principal, superintendent, or other employee in a Delaware public school:

1.1 Within five (5) years after completion of a tour of duty; or

1.2 Within five (5) years after completion of a course of professional or vocational training, if such course was begun

within five (5) years after completion of the individual's tour of duty.

2.0 Any instruction in Military Science given during years of enlistment shall be included in the six (6) years in the armed services of the United States.

3.0 Credit for service in the armed forces of the United States shall be calculated as follows:

3.1 One year of experience shall be allowed for each creditable year of full time active duty service.

3.2 In the case of a teacher, principal, superintendent or other administrative employee a combined total of ninety one (91) days of service and employment in any of these positions during any one school year will count as a year of experience.

3.3 No more than one (1) year of experience may be credited for any one (1) calendar year.

(Non-regulatory Note: See 14 Del.C. §1312(a) and §1327 Leave of Absence for Persons in Military Service).

REGULATORY IMPLEMENTING ORDER

718 Health Examinations for School District Employees

I. Summary of the Evidence and Information Submitted

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. This regulation was previously advertised in the July 1, 2004, Volume 8, Issue 1 of the Register of Regulations

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 17, 2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 718 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.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 718.

Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 718 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 718 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 718 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on October 4, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 4th day of October 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

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.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311 & 1718 (18 Del.C. §§ 311, 1718)

ORDER

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

A public hearing was held on October 5, 2004 to receive comments on amendments to Regulation 504 relating to continuing education for licensed producers and adjusters. By my order of September 28, 2004, Gregory D. Sacco was appointed hearing officer to receive comments and testimony on the proposed amendments to the regulation. Public notice of the hearings and publication of proposed Regulation 504 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Six persons attended the public hearing. Three written comments were received by the Department as a result of the public notice for comment.

Summary Of The Evidence And Information Submitted

Eugene T. Reed, Jr., the director of Consumer Services and Licensing for the Department described the proposed changes and recommended their adoption as proposed. The specific changes that Mr. Reed addressed were:

- The provisions of section 3 that allow electronic submissions, reciprocal agreements relating to continuing education with the NAIC, and course approval expirations. Providers will now be responsible for submitting a course roster of attendees. The ability of Delaware to participate in reciprocal crediting of CE credits with other NAIC member states provided the course meets the course approval standards established under this regulation.
- Section 7 allows the use of electronic reporting. The provisions of section 8 that increase the continuing education requirement for Producers to twenty-four (24) credit hours based on NAIC adopted uniform standards, four (4) of which must be in ethics. The section also requires at least three (3) hours of training for those licensees who solicit long term care policies. This section

increases the continuing education requirement for Adjusters, Public Adjusters, and Fraternal Producers to twelve (12) credit hours, four (4) of which must be in ethics. Limited Lines Producers and non-resident Adjusters' continuing education requirements have been eliminated. It will be the responsibility of the non-resident to meet their home state requirements. This is a requirement for states under GLBA for Producers.

- Section 10 increases the number of council members from four to five members for life/health and property/casualty and increases the number of claims professionals on the council from one to four.

Deputy Attorney General Michael J. Rich noted several non-substantive changes to the regulation that were not published but were desirable and appropriate. The first was to recommend that the phrase "the last day of February" be used in section 2.6 instead of the number "28." The second was to recognize that a phrase was missing from the published version of the proposed changes in section 9.1. The phrase "shall be subject to an administrative penalty up to" has to be inserted after the words "8.5 of this regulation" in section 9.1. The third was to note that minor grammatical changes were needed to sections 2.9, 8.4, 9.2 and 10.3.

Carl W. Hill, of the National Association of Insurance and financial Advisors—Delaware (NAIFA-DE), noted his organization's support for the proposed changes.

Cheryl Smith suggested that section 3.2.5 be amended to allow for a partial credit for self-study providers under certain circumstances. It was noted that the Department had recommended the case-by-case review for partial credit requests under section 3.2.5 rather than a specific non-reviewable allowance as a policy matter. The Department recommended against any change to the proposed language.

The Insurance Agents & Brokers of Delaware submitted written comments that supported adoption of the changes and which addressed the following items: an incorrect reference to section 9.3 instead of 8.3 in section 4.1.2; the missing phrase from section 9.1 and the failure to use the term "authorized representative" in the regulation even though it is included in the definitions.

Findings Of Fact

The purpose for a public hearing on a proposed regulatory change is to determine the necessity for the change and whether the language proposed to effect that change needs to be changed or modified for purposes of clarity or efficiency. There were no objections to the adoption of the proposed changes to the regulation. I find that the proposed grammatical and semantic changes are describable for purposes of clarity and do not require

republication and rehearing under the provisions of 29 Del.C. §10113. I find that the addition of the phrase "the last day of February" be used in section 2.6 instead of the number "28." And the phrase "shall be subject to an administrative penalty up to" in section 9.1 are not substantive and do not require republication and rehearing under the provisions of 29 Del.C. §10113. I find that the Department's recommendation not to change its current policy concerning the issuance of partial credit for courses except on a case by case basis under section 3.2.5 is consistent with its regulatory functions and does not violate any applicable law or the purpose and intent of the regulation.

I find that the term "authorized representative," although not used in the regulation, was intended to allow an entity sponsor or provider to identify the person who would act on its behalf and serve as a contact person whom the Department could work with as needed for regulatory compliance.

Decision

Based on the provisions of 18 Del.C. §§311 and 1718, and the record in this docket, I adopt the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated October 11, 2004 and order that Regulation 504 be amended as provided for in the notice published in the Delaware *Register of Regulations* 8 DE Reg. 409 (9/1/04) as modified by the changes to sections 2.6, 2.9, 8.4, 9.1, 9.2 and 10.3 and the amendment to the definition of authorized representative.

I order that the proposed change shall become effective on November 15, 2004.

Donna Lee H. Williams, Insurance Commissioner
October 12, 2004

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

1.0 Statutory Authority and Purpose

This Regulation is established and promulgated pursuant to 18 Del.C. §§314, ~~4726~~ 1718 and 29 Del.C. Ch.101.

2.0 Purpose

The purpose of this Regulation is to establish requirements for insurance education and ethics for resident insurance adjusters, public adjusters, producers, ~~agents~~, ~~brokers~~, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the benefit of Delaware consumers.

32.0 Definitions

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

"**Administrative record**" means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

"**Audit**" means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines, ~~and~~ self-study programs and distance learning programs based on current guidelines.

"**Authorized representative**" [or "**provider representative**"] means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records. [Where this regulation provides for an act by an entity sponsor or provider, such act shall be performed by an authorized representative.]

"**Commissioner**" means the Insurance Commissioner of the State of Delaware and/or such designee appointed by the Commissioner.

"**Completion**" when used in the context of:

- **Self-Study**, means a passing grade of 70% or better on the examination.
- **Class**, means attendance for the full amount of time approved for each course.
- **Seminar** means attendance for the full amount of time assigned for each workshop or break-out session selected.

"**Compliance date**" means the ~~[28th-last]~~ day of February of ~~the continuing education reporting period for which resident licensee continuing education or non-resident renewal is required. Each license biennium shall commence on March 1st and end February 28th of the odd year period for non-residents and the even year for residents even numbered years. Each biennial license shall commence on March 1st and end [on the last day of] February [28th] of even numbered years.~~

"**Contact person**" means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or corporate officer, and who designates the school official to represent the entity.

"**Continuously licensed**" means an uninterrupted

license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

"**Course**" ~~shall mean any class, self-study, or seminar or distance learning course for insurance producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that~~ producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that has been approved by the Department for the purpose of complying with continuing education requirements.

"**Credit hour (CEUs)**" means one (1) unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

"**Department**" means the Delaware Department of Insurance.

"**Disciplinary action**" means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer or a licensee.

"**Distance learning**" or "**Distance education**" means instructional delivery that does not constrain the student to be physically present in the same location as the instructor. Distance education includes but is not limited to: audio, instructional television, videotape, teleconferencing, audio/video conferencing, and computer conferencing, web based instruction, traditional self-study course(s) including CDs and DVDs as supplied materials and any other planned learning that normally occurs in a different place from teaching and as a result requires special techniques of course design, special instructional techniques, special methods of communication by electronic and other technology, as well as special organizational and administrative arrangements approved by the Department.

"**Entity sponsor**" or "**sponsor**" means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

"**Ethics credits**" means the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another, ~~and~~ conflicts of interest and matters that deal with individual character and personal characteristics such as honesty, integrity and professionalism in the insurance industry.

"**Hour**" means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of

which must be accounted for on the agenda or syllabus. For self-study courses, "hour" means ~~fifty (50)~~ sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

"**Initially Licensed**" means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

"**Recognized association**" means an insurance industry association established for at least 5 years.

"**School official**" means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

"**Syllabus**" means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

2 DE Reg. 122 (7/1/98)

43.0 Course Providers

~~43.1 Provider Approval.~~ A provider who sponsors a continuing education course must be approved by the ~~Commissioner~~ Department and shall be operated by, including but not limited to, an authorized insurance company, a recognized insurance agents' association, an insurance trade association, a self-insurance fund, a non-profit educational institute, national provider, a member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on written forms or in an electronic format approved prescribed by the ~~Commissioner~~ Department. The Department may approve of or participate in reciprocal agreements relating to continuing education with the NAIC and/or its members. In assessing a provider's application for approval, the ~~Commissioner~~ Department may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

43.2 General Requirements and Responsibilities.

43.2.1 Providers shall maintain the records of each individual completing a course for ~~three (3)~~ 4 years from the date of completion and shall send the Department a roster of those in attendance within thirty (30) days of the course completion date on forms or in electronic format prescribed by the Department upon request of the ~~Commissioner submit a course roster list of course attendees~~

which includes all information available on Form CE-4.

43.2.2 Providers shall notify the Producer Agent and Agency Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

43.2.3 Course providers will provide each licensee successfully completing their program a Certificate of Completion ~~Course report form CE-4 in accordance with section 8.4. It must contain, at a minimum:~~

- 4.2.3.1 Licensee's name
- 4.2.3.2 Social Security Number
- 4.2.3.3 Title of the educational activity
- 4.2.3.4 Delaware course number
- 4.2.3.5 Delaware sponsor number
- 4.2.3.6 Number of CEUs earned
- 4.2.3.7 ~~Authorized signature of school~~

official

for attendees' records only after successful completion of the entire approved education course/activity. Entity Sponsors are required to distribute a Certificate of Completion to each licensee successfully completing the educational activity within thirty (30) calendar days.

43.2.4 Course providers shall obtain the ~~Commissioner Department's~~ approval for each course offered. No prior approval shall be required for any course offered through any NAIC sponsored reciprocal agreement but course credit under this regulation shall only be allowed for those subjects eligible for course credit in Delaware. A Course Report Form CE-4 shall be completed and distributed to the licensee only after completion of the entire course. Entity Sponsors are required to distribute course report forms to each licensee successfully completing the educational activity within fifteen (15) calendar days.

43.2.5 No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the ~~Commissioner~~ Department upon request.

43.2.6 Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

43.2.7 One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

43.2.8 Course Providers are responsible for the actions of their school officials, instructors, speakers and monitors.

43.2.9 Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

43.2.10 ~~Educational activities are approved for a term of 3 years unless requested by the Commissioner to be resubmitted for approval. Course approvals, once granted by the Department, shall remain valid until modified or terminated by the entity sponsor or Department. Any~~

changes or modifications to one or more courses by an entity sponsor shall not be valid until submitted to and approved by the Department in writing. All courses approved for credit as of November 1, 2004 shall not be subject to re-approval under the provisions of this section.

43.2.11 No activity may be advertised as having been approved until the sponsor receives written notification from the Department. ~~The use of "approval pending" is acceptable advertising.~~

45.0 Instructors

45.1 An entity sponsor shall certify to the Department that t~~The~~ instructor shall possess one or more of the following qualifications:

45.1.1 A minimum of 3 years working experience in the subject matter being taught.

45.1.2 An approved professional designation in accordance with Section 9.3 from a recognized association.

45.1.3 A degree from an accredited school in the subject matter being taught.

45.1.4 Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

45.1.5 An instructor who is a licensee shall receive ~~two times~~ the same number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

45.1.6 Instructors ~~sh~~will have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course provider's policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors. ~~Course submissions must include a narrative biography of each instructor.~~

56.0 ~~Commissioner~~ Department's Action upon Violation or Non-conformity by Course Provider or Instructor

If the ~~Commissioner~~ Department determines that a course provider or instructor has violated any provisions of this regulation, the ~~Commissioner~~ Department may withdraw approval of the entity sponsor or instructor or may order a ~~monetary penalty or~~ refund of course fees to licensees who attended the course, or both. The ~~Commissioner~~ Department may also refuse to approve courses conducted by specific sponsors or instructors if the ~~Commissioner~~ Department determines that past offerings by

those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The ~~Commissioner~~ Department or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

67.0 Appeals

67.1 Appeals shall be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch.101 and 18 Del.C. §§ 323-28.

67.2 Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

- 67.2.1 A synopsis of the issue,
- 67.2.2 The basis for the appeal,
- 67.2.3 The name, address, and telephone number of a contact person,
- 67.2.4 A copy of the original course submission and supporting documents, and
- 67.2.5 A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

78.0 Required Forms:

7.1 Requests for entity sponsor approval shall be made to the Department on such forms as shall be authorized by the Department.

7.2 Requests for entity sponsor course approval shall be made to the Department on such forms as shall be authorized by the Department.

~~Course Providers shall apply for registration, course submission, repeat course submission and licensee certificate of completion (Delaware Course Report Form) on forms prescribed and approved by the Commissioner. The following forms apply unless or until revised by the Commissioner:~~

- 8.1 ~~Request for entity sponsor approval shall be made on Department Form CE-1 (Attachment 1).~~
- 8.2 ~~Request for entity sponsor course approval shall be made on Department Form CE-2 (Attachment 2).~~
- 8.3 ~~Course providers shall submit a Form CE-3 to the Department not less than 7 days prior to the offering of any course that was previously approved by the Department for an unspecified date or is to be repeated. (Form CE-3 Attachment 3)~~
- 8.4 ~~Form CE-4 Course Report Form. Form CE-4 contents may be submitted in an alternative format so long as prior approval is obtained.~~
- 8.5 ~~Continuing Education Course Evaluation Form CE-5. The Department may request licensees to complete course evaluation forms as a means of auditing a course and entity sponsor.~~

89.0 Licensee's Responsibility:

89.1 Each licensee shall retain each original course completion certificate/course report form(s) CE-4 for a period of 3 years. The certificate of completion Form CE-4 may be required in the event of a discrepancy between the licensee's records and the Department's records. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Each licensee will have thirty (30) days to produce such records upon request or audit by the Department Pursuant to section 8.5, the Department may require a licensee to complete a course evaluation form.

89.2 General Requirements. Resident licensees and producers not otherwise exempted shall earn, at a minimum, the number of education credits described below.

89.2.1 Resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules and regulations.

89.2.2 Resident adjusters, public adjusters Limited Representatives, Adjusters and Fraternal Agents shall be required to fulfill twelveten (12) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

89.2.3 Resident licensees subject to this regulation shall file with the Department a copy of their completed course report forms. Course report form CE-4(s) must be received on or before March 20th following the preceding biennium compliance date. Failure to timely file will result in notice of suspension and fines under section 10.0 of this regulation. 9.2.4 Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium by mail or by electronic access as the Department deems appropriate. The licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline (February 28th of even years) and include a copy of the providers course completion certificate course report form CE-4.

89.2.45 The maximum number of carryover credits shall not exceed five (5) credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Credits in excess of the mandatory requirements set forth in section 8.2.1 may be applied to the licensee's general course requirements for those in excess of

the March 1, 1997 through February 28, 1998 Continuing Education period. Thereafter, the maximum number of carryover credits shall not exceed 5 credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Ethics credits in excess of the mandatory requirement may apply to non-ethics credit requirements.

9.2.6 Fulfillment of continuing education requirements includes completion of approved subject matter and ethics requirements during the biennium.

9.2.7 No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed. A total of 5 credits in excess of 20 credits earned may apply to carryover during the newly licensed biennium period.

89.3 Automatic credit. For experience a/an individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period and/or who for holding a professional designation shall receive an automatic credit of ~~twelve~~ (12) credits in each biennium. The Department shall maintain a list of approved professional designations. Approved professional designations are the AAI, CEBS, CLU, CPCU, ChFC, FLMI, CFP, FSPA, CIC and RHU. Automatic credits may not be applied to satisfy the mandatory continuing education courses set forth in section 8.2.1 ethics credit requirements.

89.4 License reinstatement after suspension, or revocation or cancellation. All resident and nonresident licensees whose licenses were canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del.C. §170621 including the retaking of [all] exams for [the all] lines of authority under which the individual proposes to transact insurance. Any licensee who is reinstated under the provisions of this subsection shall not be entitled to the waiver provided for in section 8.2.5.

89.5 Extension of time. For good cause shown, the Department Commissioner may grant an extension of time during which the requirements imposed by this regulation may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner/Department no less than thirty (30) days before the expiration of the biennium period.

89.6 Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the Department Commissioner for good cause shown. "Good cause" includes long-term illness or incapacity, serving full time in the armed forces of the United States of America on active duty outside of the state of Delaware, and any other emergency situations deemed

appropriate by the Department Commissioner. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the Department Commissioner no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Those individuals serving full time in the armed forces of the United States of America on active duty outside of the State of Delaware shall notify the Department upon their return by supplying a copy of their activation orders as part of their application for a waiver. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

89.7 Sixty (60) days prior to the start of each biennium, the Department shall prepare and publish a list of those lines of insurance for which the producers are exempt from the requirements of section 8. Exemptions to continuing education requirements:

9.7.1 Agents licensed for the lines of title insurance or travel accident and baggage insurance.

9.7.2 Interim Agents.

89.8 Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section 8.2.2 of this regulation. Nonresident adjusters and public adjusters must meet the license requirements of their home state. Nonresident Agent, Broker, Consultant responsibilities:

9.8.1 Nonresident licensees shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd years with a deadline date of February 28th every odd year beginning in year 1999.

9.8.2 The Department will send renewal notices to all nonresident licensees at least ninety (90) days before the end of the biennium. Nonresidents may request a thirty (30) day extension to file for renewal provided it is in writing to the Commissioner at least thirty (30) days prior to the biennium deadline and shall provide evidence of seeking a home state letter of certification.

9.8.3 Nonresidents who fail to provide certification from home state under this regulation shall be subjected to the same penalties as a resident agent under this regulation pursuant to section 10.0.

9.9 Nonresident Adjusters responsibilities:

9.9.1 Nonresidents receiving a license in Delaware no requirements for the biennium in which they are licensed.

9.9.2 Nonresident adjusters who must meet continuing education requirements established by the insurance department in their home state shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides

evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd years. The first biennium for which nonresidents shall meet continuing education requirement begins on March 1, 1999 and ends February 28, 2001.

9.9.3 Nonresidents who are not required to complete continuing education requirements in their home state are subject to the same continuing education requirements that a resident adjuster must complete in accordance with section 9.2.2 of this regulation.

9.9.4 Exemptions to Adjuster Continuing Education Requirements. Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section 9.2.2 of this regulation. Nonresident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status. The filing requirement for nonresidents shall be on odd years. The first biennium for which nonresidents shall meet continuing education requirements begins on March 1, 1999 and ends February 28, 2001.

910.0 Penalty for Noncompliance:

910.1 Pursuant to 18 Del.C. §§334, 17132, and 171834, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under section 89.5 of this regulation [shall be subject to an administrative penalty up to] and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

910.2 Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12) months, all license(s) and appointments shall be reinstated unless or until the insurer notifies the Department Commissioner and licensee in writing of the insurer's intent to terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subject[ed] to compl[y]ing[ance] with 18 Del.C. §170621 including the retaking of [ah] examinations for [ah] line(s) of authority for which the individual licensee seeks a license that the individual proposes to transact insurance.

910.3 The Commissioner may, by Order based upon a reasonable belief that a violation of Title 18 occurred, require any individual licensed under 18 Del.C. Ch. 17 based

upon reasonable belief that a violation of Title 18 occurred, to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

101.0 Continuing Education Advisory Council

101.1 The Council shall consist of ~~fourteen~~ (104) licensees drawn from the professional organizations and the insurance industry in the State, 5 from the life and health field, ~~and~~ 5 from the property and casualty field and four (4) from the claims settlement field.

101.2 One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Department Commissioner regarding acceptance/ rejection and the number of CEUs to be granted if accepted.

101.3 The Council shall also advise the Department Commissioner on matters of concern as they arise and [be the provide] liaison between the Department and the professional organizations.

101.4 Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

101.5 The Department's decision with respect to any Entity Sponsor submission shall be final. All previously approved continuing education courses at the time this regulation becomes effective shall resubmit for approval within twelve months of the effective date of this regulation. Such courses must be resubmitted for approval within twelve (12) months of the effective date of this regulation.

11.5 The final decision on each Entity Sponsor submission shall be the Commissioner's.

121.0 Separability

12.1 If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

132.0 Effective Date

13.1 This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 504 (Formerly Regulation 47) as last amended in 1987 shall remain in effect. The amendments to this Regulation shall become effective November 15, 2004. Any matters that are not merely procedural in nature arising prior to November 15, 2004 shall be governed by the provisions of the prior version of this regulation in effect at the time the matter arose.

March 1, 1985
 Amended June 6, 1986
 Amended March 24, 1987
 Amended March 1, 1998
 Amended _____, 2004

PUBLIC INTEGRITY COMMISSION

Statutory Authority: 29 Delaware Code,
 Section 5809(6) (29 Del.C. §5809(6))

Rules adopted by the Delaware State Public Integrity Commission pursuant to 29 Del.C. §5809(6), State Employees, Officers and Officials Code of Conduct.

I. STRUCTURE OF COMMISSION

(A) **Chairperson.** Pursuant to 29 Del.C. §5808(c) of the Code of Conduct, the Commission shall elect from among its membership, a Chairperson to serve at the pleasure of the membership. The Chairperson shall preside at meetings of the Commission.

(B) **Vice-Chairpersons.** The Commission shall elect from among its membership a two Vice-Chairpersons to serve at the pleasure of the membership. ~~The~~ A Vice-Chairperson shall preside at meetings of the Commission in the absence of the Chairperson.

(C) The **Administrative Assistant** shall attend Commission meetings and hearings, shall take minutes of meetings and transcribe testimony at hearings in the absence of a court reporter. The Administrative Assistant shall maintain the books, records, and files of the Commission in the Commission's principal office, or at such other location as the Commission shall so designate. The Administrative Assistant shall carry out the duties and responsibilities required by the job description as assigned by the Commission and/or Legal Counsel.

(D) The **Commission Counsel**, legal representative, shall perform the duties delegated by 29 Del.C. §5808A and shall supervise the daily operations of the Commission Office.

(E) **Principal Office** of the Commission shall be located at the Margaret O'Neill Bldg., Dover, and all complaints, responses, correspondence, and other documents relating to the Commission business shall be filed at or mailed to the principal office whose address is:

Delaware State Public Integrity Commission
 Margaret O'Neill Bldg., Suite 3, Rm. 211
 410 Federal Street
 Dover, DE 19901

II. ADMINISTRATIVE MATTERS

(A) Commission Meetings

(1) **Place of Meetings** - The Commission shall meet to conduct its business at its principal office in Dover, but may meet, hold hearings, and exercise its powers and duties, at any other place in the state.

(2) **Notice** - The Chairperson, or in the Chairperson's absence, the Vice-Chairperson, shall fix the time and place for all meetings and hearings of the Commission by directing the Administrative Assistant to send written notice thereof together with the agenda by first class mail to each Commission member at the address listed with the Administrative Assistant.

(3) **Quorum** - Four (4) members of the Commission shall constitute quorum at meetings and hearings and a majority vote of Commission members present shall be required to take action on matters before the Commission; provided, however, at least four (4) members of the Commission shall be required to vote "affirmative" on all disciplinary hearings and orders that would impose sanctions.

(4) **Executive Session** - Commission meetings may be held in executive session when permitted by law.

(B) **Examination of Commission Files - Records** - Subject to the confidentiality requirements of the Code of Conduct, the files and records of the Commission may be examined by any member of the public in the following manner.

(1) A request must be made in writing, during regular business hours, to the Administrative Assistant on a form provided for that purpose.

(2) The Administrative Assistant first shall determine whether or not the material in the requested file or record is subject to the confidentiality provisions of the Code of Conduct. If the Administrative Assistant is unable to make this determination, the request will be referred to the Commission's Legal Counsel. If the material in the requested file or record is found not to be subject to the confidentiality provisions of the Code of Conduct, the person requesting such examination will do so only in the Office of the Public Integrity Commission during regular business hours. No file material or records subject to the confidentiality provisions of the Code of Conduct shall be given to or examined by anyone not authorized to do so.

(3) Pursuant to 29 Del.C. §10003, a copying cost of fifty cents (\$.50) per page shall be levied as a charge for copying such records.

(C) **Subpoenas** shall be on forms similar to subpoenas used by the Delaware Superior Court and shall bear the signature or facsimile signature of the Chairperson. Such forms will be available in the Commission's principal office. Subpoenas shall be served by U.S. Mail or in the same manner as subpoenas are served in the Delaware Superior Court to all parties involved in the matter before the Public Integrity Commission.

(D) **Sub-Committees** consisting of no more than three

(3) Commission members may be designated by the Chairperson, or a Vice-Chairperson in the Chairperson's absence, to perform non-binding general administrative matters of the Commission, including, but not limited to, the drafting of reports to the State Legislature as required by the Code of Conduct.

III. INVESTIGATIONS

If there is filed with the Commission a sworn complaint by any person alleging violation of the Code of Conduct, the following rules shall apply:

(A) The **Commission** shall meet and review the Complaint to determine whether the Complaint is frivolous or fails to state a violation. If the Commission determines that the Complaint states a violation, then the Commission shall:

- (1) Set the matter down for hearing; or
- (2) Refer the matter to the Commission's Legal Counsel for investigation; or
- (3) Retain the Attorney General or Special Counsel to investigate the matter if the investigation cannot be performed by the Commission's Legal Counsel where recusal is deemed necessary.

(B) **Referred Matters** - When the Commission refers matters for investigation to the Attorney General or Special Counsel, as the case may be, it shall be by letter requesting that the matter be thoroughly investigated and concluded as promptly as practicable.

(C) **Report of Investigation** - Commission's Legal Counsel, the Attorney General, or the Special Counsel, as the case may be, shall report the results of such investigation to the Commission by:

- (1) Filing a Complaint with the Commission if there is reason to believe that a violation has occurred; or
- (2) Filing a report with the Commission if there is reason to believe that no violation has occurred stating the reasons for such conclusion.

(D) **Commission Action Following Investigation** - If, following such investigation, a Complaint is filed by Commission Counsel, the Attorney General, or Special Counsel, as the case may be, the Commission will, after notice, set the matter down for hearing and the Complaint shall be prosecuted by Commission Counsel, the Attorney General, or Special Counsel, as the case may be. If following such investigation, no Complaint is filed, the Commission may dismiss the matter or take such other action as it deems necessary and as provided by the Code of Conduct.

(E) The Commission, upon receiving information that violations of the Code of Conduct may have occurred, may upon its own initiative, if it finds good cause therefor, refer the matter for investigation in accordance with the provisions set forth in this section relating to investigations.

IV. HEARINGS AND DECISIONS

If a sworn, written complaint is filed with the Commission and the Commission determines that it should be scheduled for a hearing, the following Rules shall apply:

(A) **Prosecuting Attorney** - The Commission Counsel shall be the Prosecutor, except where the Attorney General or Special Counsel has been retained under 29 Del.C. §5808A (5), in which case the Attorney General or Special Counsel may be the Prosecutor. It shall be the duty of the Prosecutor to ensure that all pertinent evidence is placed in the record for the Commission's consideration. The prosecutorial functions shall be performed by personnel who are not serving as Legal Counsel to the Commission.

(B) **Respondent** - The person charged in the Complaint with violating the Code of Conduct shall be referred to herein as Respondent. Respondent is entitled to retain legal counsel.

(C) **The Complaint:**

- (1) shall be served on Respondent; and
- (2) shall specifically identify each portion of the Code of Conduct Respondent is alleged to have violated and facts upon which each alleged violation is based.

(D) **Service-Response to Complaint** - Service upon Respondent shall be made by personal service by any person authorized by the Commission or by registered or certified mail sent to the last known dwelling place and/or work place of Respondent. Within twenty (20) days after service of the Complaint on Respondent, Respondent shall serve on the Prosecutor and file with the State Public Integrity Commission a written Response.

(E) **Scheduling Hearing - Transcript** - After the Response is served and filed, the Commission shall schedule a hearing. A transcript of the hearing shall be made and retained subject to the confidentiality requirements of the Code of Conduct.

(F) **Inspection and Copying** - The Respondent shall be permitted to inspect and copy documents or other tangible objects which will be used as evidence against Respondent.

(G) **Exculpatory Information** - If the Commission Counsel or the Commission at any time receives any exculpatory information respecting an alleged violation, such information shall promptly be made available to the Respondent.

(H) **Subpoenas** - The Prosecutor and Respondent may apply to the Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents. The subpoenas will be issued if the testimony or documents are relative, not cumulative, and if the applications have been made with reasonable promptness.

(I) **Pre-Hearing Conference** - A pre-hearing conference may be held with the Chairperson or the Chairperson's designee and the parties to discuss ways of expediting the hearing and ensuring the fairness of the

hearing. Among the items that may be covered at such a pre-hearing conference are:

(1) the identity of the witnesses each party intends to call at the hearing and the subject matter of their expected testimony;

(2) the identification of documents and other tangible evidence each party intends to introduce at the hearing and whether or not there will be objection to the introduction; and

(3) stipulations of facts and the avoidance of unnecessary proof and cumulative evidence.

(J) **Evidence** offered by the parties shall be admitted if it has probative value unless the Commission determines that the evidence is privileged or inadmissible for some other reason. The Commission may exclude evidence which is not relevant or which is cumulative.

(K) **Burden of Proof** - The burden of proving violations of the Code of Conduct is on the Prosecutor and such violations must be proven by clear and convincing evidence.

(L) **Order of Proceedings** at the hearing shall be as follows:

(1) The Chairperson or the Chairperson's designee shall open and preside at the hearing.

(2) An opening statement by the Prosecutor.

(3) An opening statement by the Respondent.

(4) Witnesses and other evidence by the Prosecutor.

(5) Witnesses and other evidence by Respondent.

(6) Rebuttal witnesses and other evidence by the Prosecutor, if appropriate.

(7) Witnesses may be cross-examined by the opposing party. Redirect examination and recross-examination may be permitted in the Commission's discretion. Commission members may also question witnesses.

(8) Closing argument by the Prosecutor.

(9) Closing argument by Respondent.

(10) Rebuttal closing argument by the Prosecutor, if appropriate.

M. **Post Hearing Briefs and Oral Argument** may be required in the discretion of the Commission.

N. **Quorum - Number Required to Sanction** - Four (4) members of the Commission constitute a quorum and sanctions may be imposed only by the affirmative action of at least four (4) members. 29 Del.C. §5808(d).

O. **Decisions** after hearing by the Commission shall be rendered in writing as promptly as reasonably possible. Decisions shall set forth (a) findings of fact based on the evidence, (b) conclusions of law as to whether Respondent has violated the Code of Conduct and (c) what sanctions the Commission is imposing if violations of the Code of Conduct are found. Commission members, if any, who disagree with the Decision of the Commission may file

dissenting opinions.

P. **Motion for Reconsideration** may be served and filed by either party within ten (10) days after the filing of the Commission's Decision. The motion shall briefly and succinctly state the ground on which the motion is based. Within ten (10) days after service of the motion, the opposing party may serve and file a brief and succinct response to each ground asserted in the motion. The Commission will determine from the motion and response whether reconsideration will be granted and, if so, what procedure will be followed for reconsideration.

Q. **Confidentiality** - Complaints, Hearings, and Decisions of the Commission shall be confidential to the extent required by 29 Del.C. §5810(h).

R. **Time Limitations** set forth in these Rules may for good cause shown, be extended or shortened in the discretion of the Commission.

S. **Disqualification** - Members of the Commission may disqualify themselves from participating in any hearing upon submission in writing and under oath of an affidavit by the Commission member or by the Prosecutor, or by Respondent setting forth the reason for the disqualification. The decision by the member of the Commission concerning disqualification can be overturned by a vote of at least four (4) members of the Commission.

VI. REQUESTS FOR WAIVERS AND ADVISORY OPINIONS

(A) 29 Del.C. §5805 deals with "Prohibitions relating to conflicts of interest" and 29 Del.C. §5806 deals with "Code of Conduct." The State Public Integrity Commission may, pursuant to 29 Del.C. §5807, grant Waivers and Advisory Opinions concerning the prohibitions of §§5805 and 5806 pursuant to the following procedures:

(1) **Applications to be in Writing** - The individuals or State agency seeking a Waiver or Advisory Opinion shall apply in writing to the Commission setting forth in detail the applicable parts of §§5805 and/or 5806 involved and the specific reasons a Waiver or Advisory Opinion is warranted or required.

(2) **Quorum - Majority Vote** - Four (4) members of the Commission constitute a quorum under 29 Del.C. §5808(c). A vote of a majority of the Commission members present at a meeting is required for a Waiver or an Advisory Opinion.

(3) **Standards for Waiver** - A Waiver may be granted only if the Commission determines in writing that the prohibitions in the parts of §§5805 and/or 5806 in issue are not necessary under the circumstances to achieve the public purposes of the Code of Conduct or if enforcing the prohibitions under the circumstances would result in undue hardship to the employee, state official, or honorary state official and state agency. 29 Del.C. §5807(a).

(4) **Advisory Opinions** are also to be in writing.

(5) **Attendance at Meeting - Decisions Without Attendance** - Prior to reaching its decision on the Application for a Waiver or an Advisory Opinion, the Commission may require the applicant and others with pertinent knowledge of the facts necessary for the Commission to reach a decision to attend a meeting of the Commission and testify. The Commission may in its discretion require that the testimony be under oath. The Commission may in a clear case grant or deny a Waiver or issue an Advisory Opinion based on the written application without requiring the attendance at a meeting of the applicant or others.

(6) **Reliance** - Any person who acts in good faith reliance upon any Waiver Decision or Advisory Opinion of the Commission shall not be subject to discipline or other sanction under the Code of Conduct with respect to the matters covered by the Waiver Decision or Advisory Opinion, provided there was a full disclosure to the Commission of all material facts necessary for the Decision.

(7) **Confidentiality** - Any application for a Waiver or Advisory Opinion, any proceedings and any decisions with respect thereto shall be maintained confidential by the Commission provided that:

(a) Public disclosure shall be made by the Commission upon the written request of the applicant.

(b) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of the Code of Conduct.

(c) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention.

(d) In the event that a Waiver is issued, the decision of the Commission and the record of all proceedings relating thereto shall be open to public inspection.

Adopted by the State Public Integrity Commission: April 6, 1993

Effective Date: May 7, 1993

Revised: December 8, 1995 to comport with the law by the State Public Integrity Commission.

Revised August 19, 2004 to comport with the law by the State Public Integrity Commission.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER FIFTY-NINE

**RE: Implementing The *Strategies For State Policies*
And Spending**

WHEREAS, Delaware has a well-deserved reputation as an ideal place to live, work, raise a family, and enjoy recreational activities; and

WHEREAS, Delaware's natural resources, solid economy, opportunities for personal business success, and overall quality of life are projected to attract almost 190,000 new residents by the year 2020; and

WHEREAS, Delawareans are concerned that the "quality of place" in our State is threatened by sprawl, traffic congestion, loss of farmlands and open space, and diminished air and water quality; and

WHEREAS, the protection of public health and welfare requires a more efficient planning of growth and development throughout Delaware; and

WHEREAS, haphazard sprawl and unplanned growth create an inefficient demand for public infrastructure and facilities that all Delaware taxpayers must finance, no matter where they live; and

WHEREAS, the Livable Delaware Agenda, as outlined in Executive Order 14, includes a set of principles for creating a more Livable Delaware; and

WHEREAS, those principles are to invest taxpayer dollars effectively while slowing sprawl, to preserve farmland and open space, to encourage infill and redevelopment that avoids the development of greenfields, to facilitate attractive and affordable housing, and to preserve Delaware's quality of life through sustainable development; and

WHEREAS, all state agencies must provide leadership and set positive examples with policies, programs and expenditures that are aligned to the principles of Livable Delaware; and

WHEREAS, the Cabinet Committee on State Planning Issues, in consultation with the Governor's Advisory Council on Planning Coordination, has undertaken an extensive process of analyzing long-term growth trends, soliciting public comment, coordinating with State and local government agencies, and considering the impacts of expected growth throughout the State over the next five years; and

WHEREAS, on June 3, 2004, the Cabinet Committee on State Planning Issues approved an updated set of *Strategies for State Policies and Spending* to ensure efficient, rational and cost-effective investment in necessary

infrastructure;

NOW, THEREFORE I, RUTH ANN MINNER, by the authority vested in me as Governor of the State of Delaware, hereby declare and order on this 23rd day of September 2004:

1. The Office of State Planning Coordination shall publish, both in printed form and on-line, the updated *Strategies for State Policies and Spending* document and maps, including geospatial data (with full metadata) representing the various investment level areas recommended in the *Strategies* document; and

2. As explained more fully in the published *Strategies* document, the Green Infrastructure recommendations approved on December 8, 2003 by the Governor's Advisory Council on Planning Coordination are to be considered as a part of the *Strategies*; and

3. All state departments and agencies shall, no later than December 31, 2004, submit to the Office of State Planning Coordination an update of the Livable Delaware Implementation Plans developed pursuant to Executive Order 14; and

4. All state departments and agencies shall use the *Strategies* document and maps as a guide to making all decisions on policy, infrastructure and other investments, and resource management; and

5. The State Budget Office shall use the *Strategies* document and maps as a guide in developing and reviewing state department and agency spending plans; and

6. The *Strategies* document and maps shall be made available to all county and municipal government agencies for use in all planning-related endeavors, including, but not limited to, comprehensive plan development and strategic planning; and

7. The *Strategies* document and maps shall be used in the Preliminary Land Use Service (PLUS) process as a tool for helping developers, land-owners, and local governments create efficient, rational and smart-growth development options in those areas most ready to receive and serve new development; and

8. The Office of State Planning Coordination shall, in conjunction with the Cabinet Committee on State Planning Issues and the Governor's Advisory Council on Planning Coordination, plan and carry out an update of the *Strategies* document and maps within five years of the effective date of this order.

Ruth Ann Minner, Governor

ATTEST:
Harriet Smith Windsor
Secretary of State

GOVERNOR'S APPOINTMENTS

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| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|---|---|--|
| Board of Cosmetology & Barbering | Mr. Jerome N. Stanley, Jr. | 8/5/2006 |
| Board of Examiners for Nursing Home Administrators | Ms. Carolyn R. Cotter | 9/27/2007 |
| Board of Medical Practice | Ray A. Blackwell, M.D. Mr. Michael G. Green Karl W. McIntosh, M.D. | 9/27/2007 9/27/2007 9/27/2007 |
| Board of Nursing | Lucille C. Gambardella, M.D. Mr. David C. Mangler Ms. Cheryl T. Richter Ms. Irene A. Washabau | 9/27/2007 9/27/2007 9/27/2007 9/27/2007 |
| Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers | Ms. Regina A. Bilton | 9/27/2007 |
| Board of Veterinary Medicine | Ms. Kathy M. Davison | 2/8/2005 |
| Children's Trust Fund Board of Directors | Mr. Michael Arrington | 9/13/2007 |
| Committee on Disposition of Unmarked Human Burials | Ms. Karen Rosenberg | 9/27/2005 |
| Council of Delaware Association of Professional Engineers | Mr. Vincent G. Robertson | 9/27/2008 |
| Council on Manufactured Housing | Mr. Jay A. Estep Ms. Roberta J. Hemmerich Ms. Heather L. Howell Mr. Richard E. Maly Mr. William J. Reed Ms. Brenda R. Styers | 9/27/2006 9/27/2006 9/27/2006 9/27/2006 9/27/2006 9/27/2006 |
| Council on Transportation, Chair | Mr. Weston E. Nellius | 9/27/2007 |
| Delaware Compensation Commission | Mr. Scott A. Green | 9/13/2010 |
| Delaware Manufactured Home Relocation Authority | Mr. Kenneth I. Fuchs | 6/30/2010 |
| Delaware Thoroughbred Racing Commission, Commissioner | Ms. Debra M. Killeen | 7/17/2010 |

GOVERNOR'S APPOINTMENTS

| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|---|-------------------------------------|-----------------------------|
| Family Court in and for Kent County, Associate Judge | The Honorable William J. Walls, Jr. | 9/21/2016 |
| Greater Wilmington Convention and Visitors Bureau | Mr. Ernest J. Camoirano | 6/30/2006 |
| | Mr. Ronald Kosh | 6/30/2005 |
| | Ms. Cheryl Przelomski | 6/30/2006 |
| Infant Mortality Task Force | Mr. Joseph M. Letnaunchyn | Pleasure of the Governor |
| | Reverend John F. Holden | Pleasure of the Governor |
| | Mr. Mark Meister, Sr. | Pleasure of the Governor |
| | John Stephano, M.D. | Pleasure of the Governor |
| | Ms. Nancy Wilson | Pleasure of the Governor |
| Juvenile Justice Advisory Group, Chair | Mr. Michael Arrington | Pleasure of the Governor |
| Juvenile Justice Advisory Group | Timothy Brandau, Ph.D. | Pleasure of the Governor |
| | Mr. Brian F. Gimlet | Pleasure of the Governor |
| | Edward W. Goate, Ed.D. | Pleasure of the Governor |
| | Ms. Mary Frances Haney | Pleasure of the Governor |
| | Wilma Mishoe, Ed.D. | Pleasure of the Governor |
| | Mr. Patrick S. Pugh | Pleasure of the Governor |
| | Ms. Beverly Williams | Pleasure of the Governor |
| | Mr. David T. Woods | Pleasure of the Governor |
| State Committee of Dietetics/Nutritionists | Ms. Sharon B. Collison | 9/28/2007 |
| | Ms. Marjorie D. Ressler | 9/28/2007 |
| State Examining Board of Physical Therapists | Ms. Kristen C. Whiteman | 9/28/2007 |

GOVERNOR'S APPOINTMENTS

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| BOARD/COMMISSION OFFICE | APPOINTEE | TERM OF OFFICE |
|---|--|-------------------------------------|
| State Fire Prevention Commission | Mr. Willard R. Betts, Jr. Mr. Kenneth H. McMahon Mr. Marvin C. Sharp | 9/16/2010 9/16/2010 9/21/2005 |
| Sussex County Vocational-Technical School Board of Education | Mr. Patrick J. Cooper | 11/15/2006 |
| Tourism Advisory Board | Mr. Michael Schwartz | 9/28/2007 |

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF AIR AND WASTE MANAGEMENT

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

REGISTER NOTICE

1. Title Of The Regulations:

DELAWARE 2002 MILESTONE COMPLIANCE DEMONSTRATION FOR KENT AND NEW CASTLE COUNTIES: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone.

2. Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) require Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for each of the milestone years (1996, 1999, 2002, and 2005) to demonstrate that the actual emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) in Kent and New Castle Counties do not exceed the required emission targets specified in Delaware's Rate-of-Progress Plans. The document presented herein is for the milestone year of 2002, and thus termed as Delaware's 2002 Milestone Compliance Demonstration. The document analyzes VOC and NOx emission data in 2002 and concludes that Delaware's 2002 milestone for complying with the CAAA's VOC and NOx emission reduction requirements has been successfully met.

3. Possible Terms Of The Agency Action:

None.

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. Ch. 60, Environmental Control.

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

None.

6. Notice Of Public Comment:

A public hearing will be held on December 1, 2004, beginning at 6:00 pm, in AQM Conference Room, Priscilla Building, 156 South State Street, Dover, DE 19901.

7. Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542, October 12, 2004.

Proposal

**DELAWARE 2002 MILESTONE COMPLIANCE
DEMONSTRATION FOR KENT AND NEW CASTLE
COUNTIES**

**Demonstrating Adequate Progress toward Attainment of
the 1-Hour National Ambient Air Quality Standard for
Ground-Level Ozone**

**Submitted to US Environmental Protection Agency
By Delaware Department of Natural Resources and
Environmental Control**

November 2004

Acronym List

| | |
|--------|--|
| AQM | Air Quality Management Section of DNREC |
| CAAA | Clean Air Act Amendments of 1990 |
| CMSA | Consolidated Metropolitan Statistical Area |
| CO | Carbon Monoxide |
| DAWM | Division of Air and Waste Management of DNREC |
| DNREC | Delaware Department of Natural Resources and Environmental Control |
| EID | Emission Inventory Development |
| EPA | United States Environmental Protection Agency |
| FMVCP | Federal Motor Vehicle Control Program |
| I/M | Inspection and Maintenance |
| LEV | Low Emission Vehicle |
| MCD | Milestone Compliance Demonstration |
| NAA | Nonattainment Area |
| NAAQS | National Ambient Air Quality Standard |
| NLEV | National Low Emission Vehicle |
| NOx | Oxides of Nitrogen |
| OAQPS- | Office of Air Quality Planning and Standards of EPA |
| OTAG | Ozone Transport Assessment Group |
| OTC | Ozone Transport Commission |
| OTR | Ozone Transport Region |
| PCP | Planning and Community Protection Branch of DNREC |
| PEI | Periodic Emission Inventory |
| RACT | Reasonably Available Control Technology |
| RPP | Rate-of-Progress Plan |
| RVP | Reid Vapor Pressure |
| SCC | Source Classification Code |
| SIC | Standard Industrial Classification |
| SIP | State Implementation Plan |
| TPD | Tons per day |
| TPY | Tons per year |
| VOC | Volatile Organic Compound |

Summary

Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This document addresses Delaware's 2002 milestone year compliance demonstration regarding progress toward attainment of the 1-hour ozone NAAQS.

Under Sections 182(b)(1) and 182(d) of CAAA, Delaware is required (1) by 1996 to achieve a 15% reduction in emissions of volatile organic compounds (VOCs) from its 1990 level in the two nonattainment counties, (2) by 1999 to achieve an additional 9% reduction in emissions of either VOCs or oxides of nitrogen (NO_x) from the 1990 levels, and (3) by 2002 to achieve a second additional 9% reduction in emissions of either VOCs or NO_x from the 1990 levels. Under these requirements, the 2002 target levels of VOC and NO_x emissions for the two nonattainment counties in Delaware have been determined to be 101.54 tons per day (TPD) and 143.12 TPD, respectively. To achieve these emissions targets, Delaware implemented numerous control measures over a large variety of VOC and NO_x emission sources from 1990 to 2002. Delaware's 2002 emission inventory, which has been recently compiled, shows that the 2002 inventoried VOC and NO_x emissions in Kent and New Castle Counties are 78.12 TPD and 144.49 TPD, respectively. These inventoried VOC and NO_x emissions, when combined together and expressed as an equivalent VOC emission, are significantly lower than the required 2002 targets levels. Thus, Delaware demonstrates herein that its 2002 milestone for complying with the CAAA's VOC and NO_x emission reduction requirements has been successfully met.

1.0 Introduction

1.1 Background

The Clean Air Act Amendments of 1990 (CAAA) set forth National Ambient Air Quality Standards (NAAQS) for the ground-level ozone. High levels of ground level ozone will harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Children, the elderly and individuals with respiratory diseases are especially vulnerable to the threat of ozone. Even healthy individuals can be harmed if they attempt strenuous activity on days with high ozone levels. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations. Currently, there are two national standards for the ground-level ozone, i.e., the 1-hour standard (0.12 ppm) and the 8-hour standard (0.08 ppm). This document addresses issues relevant to the 1-hour standard only.

The CAAA classifies five nonattainment areas

(NAA) that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In the order of increasing severity, they are marginal, moderate, serious, severe, and extreme. According to Section 181 of CAAA, attainment dates for individual areas depend on their nonattainment designations. The Philadelphia Consolidated Metropolitan Statistical Area (CMSA) is classified as a severe nonattainment area (Figure 1), which has an attainment date of 2005. As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this document apply only to Kent and New Castle Counties.

Generally, the ground level ozone is not directly emitted to the atmosphere, but is formed in the lower atmosphere by photochemical reactions mainly between volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the presence of sunlight. Thus, VOC and NO_x are defined as ozone precursors. In order to reduce ozone concentration in the ambient air, the CAAA requires all ozone nonattainment areas to achieve specific reductions in anthropogenic VOC emissions and/or NO_x emissions over several specified periods of years until the ozone standard is attained. This requirement for periodic emission reductions is termed as "rate of progress" toward the attainment of the 1-hour ozone standard (Reference 1).

Under Section 182(d) of CAAA, Delaware is required to develop and submit a State Implementation Plans (SIP) revision to the United States Environmental Protection Agency (EPA) for each of the milestone years of 1996, 1999, 2002 and 2005. In these plans, Delaware has to show that, by adopting and implementing adequate control measures, it can achieve adequate rate-of-progress reductions in VOC and/or NO_x emissions for its severe ozone nonattainment area, i.e., Kent and New Castle Counties. Since these state implementation plans construct the path of Delaware's rate of progress toward the attainment of the ozone standard, they are termed as Delaware's Rate-of-Progress Plans (RPPs).

Under Section 182(a) of the CAAA, Delaware is required to develop comprehensive emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005 to monitor actual VOC and NO_x emissions from its nonattainment areas along the path of rate of progress. These emission inventories are termed as Delaware's periodic emission inventories (PEIs). Under Sections 182(a) and 182(g) of the CAAA, Delaware is required to use these periodic emission inventories (except the 1993 PEI) to demonstrate whether Delaware meets the required emission reductions as specified in its rate-of-progress plans in individual milestone years. This demonstrating process is termed as milestone compliance demonstration (Reference 1).

This document demonstrates Delaware 2002 milestone year compliance with adequate progress in emission reductions toward attainment of the 1-hour ozone NAAQS as required by the CAAA. The document is hereafter referred to as "Delaware 2002 Milestone Compliance Demonstration."

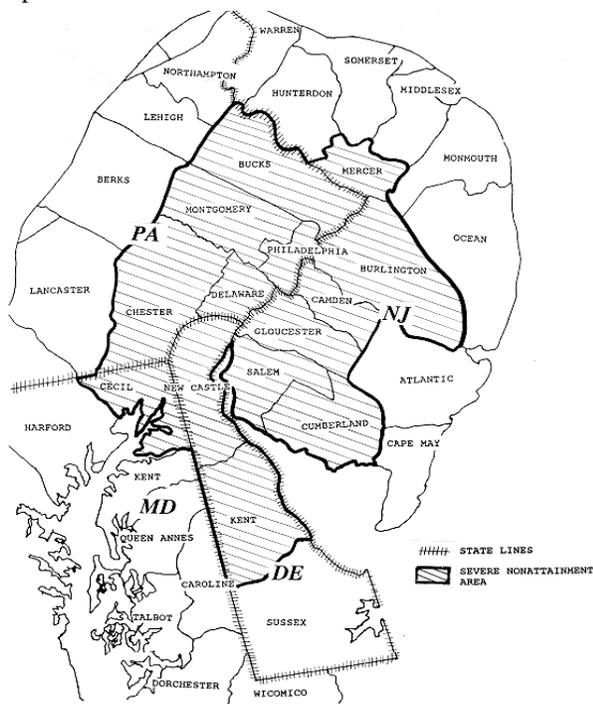


Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.¹

1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for Delaware's air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section, under the management of Raymond H. Malenfant, Program Manager and Ronald A. Amirikian, Planning Supervisor. Frank F.

1. This map is adopted from *Major CO, NO₂ and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

Gao, Environmental Engineer of Airshed Evaluation and Planning Program in the PCP Branch, is the project leader and principal author of this document. Questions or comments regarding this document should be addressed to F. Gao, (302)323-4542, AQM, 715 Grantham Lane, New Castle, DE 19720, or be e-mailed to Frank.Gao@state.de.us.

2.0 Delaware State Implementation Plans

2.1 Delaware 1990 Base Year Emission Inventory

Section 182(a)(1) of CAAA requires each state with ozone nonattainment areas to develop a comprehensive 1990 emission inventory for ozone precursors for its nonattainment areas. The emission inventory must be submitted as a state implementation plan (SIP) revision to EPA for approval. This 1990 base year emission inventory is used as the basis for a state to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard. Delaware's 1990 base year emission inventory was submitted to the EPA in May 1994, and approved by EPA in March 1996 (Reference 2).

The 1990 Base Year Inventory is categorized by five source sectors, i.e., point, stationary area, off-road mobile, on-road mobile and biogenic source sectors. Since volatile organic compounds (VOC), nitrogen oxides (NO_x) and carbon monoxide (CO) are precursors for ground level ozone formation, their emissions from these source sectors in 1990 are inventoried and reported in the 1990 Base Year Inventory. Because the contribution of CO to ozone formation is insignificant, the CO component of the 1990 Base Year Inventory is not included in Delaware's rate-of-progress planning for attainment of ozone standard. A summary of VOC and NO_x emissions by county in the 1990 Base Year Inventory is presented in Table 1. The unit of emissions reported in Table 1 is tons per day (TPD) in the peak ozone season. The peak ozone season in Delaware is defined as from June 1 through August 31.

Table 1. Summary of VOC and NO_x Emissions (in TPD) in 1990 Base Year Inventory*

| 1990 Base Year | Kent | | New Castle | | Total NAA | |
|------------------------|--------------|-----------------|---------------|-----------------|---------------|-----------------|
| | VOC | NO _x | VOC | NO _x | VOC | NO _x |
| All Source Sectors | | | | | | |
| Total Emissions | 65.23 | 25.84 | 131.30 | 137.00 | 196.53 | 162.85 |

* Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 2).

2.2 Delaware Rate-of-Progress Plans and Milestone Year Emission Targets

Under Sections 182(b)(1) and 182(d), Delaware is required to develop a rate-of-progress plan (as a SIP revision) for the period from 1990 to 1996. This plan must describe how Delaware could achieve an actual VOC emission reduction of at least 15% of its 1990 VOC emission level, and thus is termed as Delaware 1996 Rate-of-Progress Plan (RPP) or 15% RPP (Reference 3). The year of 1996 is defined as the first milestone year toward attainment of the 1-hour ozone standard.

In addition to the 15% VOC emission reduction, Section 182(d) of CAAA requires Delaware to submit three post-1996 rate-of-progress plans that will lead to VOC and/or NOx emission reductions of at least 3% per year between 1996 and 2005. These three post-1996 plans are: the 1999 RPP covering a 3-year period from 1997 to 1999, the 2002 RPP covering the period from 2000 to 2002, and the 2005 RPP covering the period from 2003 and 2005. Based on the 3% per year emission reduction requirements, these three RPPs set forth Delaware's VOC and NOx emission targets in their corresponding milestone years of 1999, 2002 and 2005.

The required rate-of-progress reductions in VOC and/or NOx emissions in each rate-of-progress plan are estimated from the 1990 baseline level. For this purpose, the 1990 base year emissions in Table 1 must be adjusted to (1) include only anthropogenic and photochemically reactive emissions, and (2) exclude emission reductions from control measures promulgated prior to the 1990 CAA Amendments (Reference 1). After these adjustments, the required VOC and/or NOx emission reductions can be estimated, and then the VOC and/or NOx emission targets of each milestone year can be calculated. A summary of VOC and /or NOx emission targets for individual milestone years are presented in Table 2. Details of how to conduct base-year inventory adjustments and how to estimate emission reductions and emission targets can be found in References 1, 2, 3, 4, 5, 6 and 7.

Table 2. Delaware VOC and/or NOx Emission Targets for Individual Milestone Years

| Emission Targets (TPD) | 1996 Milestone Year | 1999 Milestone Year | 2002 Milestone Year | 2005 Milestone Year |
|------------------------|---------------------|---------------------|---------------------|---------------------|
| VOC | 115.82 | 110.21 | 101.54 | 95.41 |
| NOx | * | 148.96 | 143.12 | 135.37 |

*NOx reduction was not required for the 1996 milestone year.

2.3 Control Measures and Expected VOC/NOx Emissions in 2002 RPP

To meet the 2002 VOC and NOx emission targets, Delaware proposed numerous control measures in its 2002 RPP. These control measures include federal mandatory

rules and Delaware state regulations to be promulgated prior to the peak ozone season of 2002. These rules and regulations cover a large variety of VOC and NOx emission sources in all anthropogenic source sectors. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations can be found in Delaware 2002 RPP, as amended in December 2000 (Reference 5), and Delaware Regulations Governing Control of Air Pollution (Reference 8).

Table 3. Control Measures Proposed in Delaware's 2002 RPP

| Control Measures and Regulations | Creditability | Emission Controlled | Effective Date |
|--|---------------|---------------------|----------------|
| Point Source Controls | | | |
| RACT "Catch-Ups" in Kent County: | | | |
| Solvent Metal Cleaning | Creditable | VOC | 31-May-95 |
| Surface Coating of Metal Furniture | Creditable | VOC | 31-May-95 |
| Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip. | Creditable | VOC | 31-May-95 |
| New RACT Regulations: | | | |
| Bulk Gas. Marine Tank Vessel Loading Facil. | Creditable | | 31-Dec-95 |
| SOCMI Reactor Proc. and Distillation Operat. | Creditable | VOC | 01-Apr-96 |
| Batch Processing Operations | Creditable | VOC | 01-Apr-96 |
| Offset Lithography | Creditable | VOC | 01-Apr-96 |
| Aerospace Coatings Industrial Cleaning | Creditable | VOC | 01-Apr-96 |
| Solvents | Creditable | VOC | 29-Nov-94 |
| Non-CTG RACT Delaware NOx | Creditable | VOC | 31-May-95 |
| RACT | Creditable | NOx | 31-May-95 |
| Regional NOx Control OTC MOU | Creditable | NOx | 01-May-99 |
| Federal Benzene Waste Rule | Creditable | VOC | Spring 1995 |
| Sanitary Landfills Irreversible Process | Creditable | VOC | 09-Oct-93 |
| Changes | Creditable | VOC | 01-Jan-96 |

| Stationary Area | | | |
|---|---------------|----------|---------------|
| Source Controls | | | |
| RACT "Catch-Ups" in Kent County: Solvent Metal Cleaning | Creditable | VOC | 31-May-95 |
| Cutback Asphalt | Creditable | VOC | 31-May-95 |
| New RACT Regulations: Stage I Vapor Recovery-Gas. Dispensing Facil. | Creditable | VOC | 15-Nov-94 |
| Emulsified Asphalt Motor Vehicle | Creditable | VOC | 31-May-95 |
| Refinishing | Creditable | VOC | 01-Apr-96 |
| Offset Lithography | Creditable | VOC | 01-Apr-96 |
| Aerospace Coatings Stage II Vapor | Creditable | VOC | 01-Apr-96 |
| Recovery | Creditable | VOC | 15-Nov-94 |
| Open Burning | Creditable | VOC, NOx | 08-Feb-95 |
| Off-Road Mobile | | | |
| Source Controls | | | |
| Reformulated Fuel New Emission Standards | Creditable | VOC | 01-Jan-95 |
| Spark Ignition Engines | Creditable | VOC, NOx | Court-Ordered |
| Compression Ignition Engines | Creditable | VOC, NOx | Court-Ordered |
| Marine Engines | Creditable | VOC | Ordered |
| Locomotives | Creditable | NOx | 31-Dec-01 |
| On-Road Mobile | | | |
| Source Controls | | | |
| FMVCP and RVP | Noncreditable | VOC, NOx | Pre-1990 |
| Tier I Vehicle Emissions Standards Basic I/M for Kent County | Creditable | VOC, NOx | Model Yr 1994 |
| ATP and Pressure Test for Kent County | Creditable | VOC, NOx | 01-Jan-91 |
| ATP and Pressure Test for New Castle County | Creditable | VOC, NOx | 01-Jan-95 |
| Reformulated Fuel | Creditable | VOC | 01-Jan-95 |
| LEV Program | Creditable | VOC, NOx | 01-Nov-99 |

In the 2002 RPP, Delaware projected 2002 VOC and NOx emissions in the peak ozone season assuming all control measures listed in Table 3 were implemented as expected. The projections are termed as "control strategy projections" and conducted following the methods and procedures specified in relevant EPA guidance documents (References 9, 10 and 11). In the projection calculations,

factors such as growth, control efficiency, rule effectiveness, and rule penetration, are considered and incorporated whenever appropriate for point sources, stationary area sources and non-road mobile sources. Emission projections for on-road mobile sources were conducted using EPA's MOBILE5a software. Details of the control strategy projections are presented in the 2002 RPP, as amended in December 2000 (Reference 5). A summary of the 2002 VOC and NOx control strategy emission projections is given in Table 4.

Table 4. Delaware 2002 Control Strategy Projections for VOC and NOx Emissions (TPD)

| 2002 RPP All Source Sector | Kent | | New Castle | | Total NAA | |
|-------------------------------|--------------|--------------|--------------|---------------|---------------|---------------|
| | VOC | NOx | VOC | NOx | VOC | NOx |
| Emission Projections | 20.53 | 24.01 | 81.01 | 118.07 | 101.54 | 142.08 |

As shown in Table 4, the total VOC and NOx emissions projected for 2002 in Delaware's nonattainment area (i.e., Kent and New Castle Counties) are 101.54 TPD and 142.08 TPD, respectively. The VOC projection is equal to the emission target, while the NOx projection is lower than the target (143.12 TPD). Therefore, the 2002 RPP concludes that its proposed control measures are adequate and enough for Delaware to meet CAAA's rate-of-progress requirements on VOC and NOx emission reductions in the milestone year of 2002.

2.4 Delaware 1993, 1996, 1999 and 2002 Periodic Emission Inventories

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. The emission data in these periodic inventories are either reported directly by individual sources (e.g., point sources such as industrial facilities), or calculated from the subject year activity data obtained from relevant sources or other agencies (e.g., area sources). These periodic emission inventories cover all sources included in the Delaware 1990 Base Year Emission Inventory. Delaware submitted to EPA its 1993 periodic emission inventory (PEI) in January 1998, its 1996 EPI in November 1999, its 1999 PEI in June 2002, and its 2002 PEI in June 2004. Emissions in these periodic emission inventories are reported in tons per year (TPY) and in tons per day (TPD) in the peak ozone season. Details of how Delaware compiled these periodical emission inventories are described in References 12 through 15. For the purpose of demonstrating milestone year compliance, a summary of VOC and NOx emissions (in the unit of TPD) in the 1996 PEI, 1999 PEI and 2002 PEI is presented in Table 5.

Table 5. Summary of Delaware's 1996, 1999 and 2002 Periodic Emission Inventories (TPD)

| All Source Sectors | 1996 PEI | | 1999 PEI | | 2002 PEI | |
|------------------------|---------------|---------------|--------------|---------------|--------------|---------------|
| | VOC | NOx | VOC | NOx | VOC | NOx |
| Total Emissions | 101.87 | 121.55 | 88.69 | 117.68 | 78.12 | 144.49 |

2.4 Delaware 1996 and 1999 Milestone Compliance Demonstration

As mentioned earlier, under Sections 182(d) of CAAA, Delaware was required (1) to achieve in 1996 an actual VOC emission reduction of at least 15% from its 1990 VOC emission level, (2) to achieve in 1999 an additional 9% VOC and/or NOx emission reductions from the 1990 base year VOC or NOx emission levels. To demonstrate achieving these emission reduction goals, Delaware developed its 1996 milestone compliance demonstration (MCD) document in February 2000, and its 1999 MCD document in June 2003. A summary of the 1996 MCD is presented in Table 6, and a summary of the 1999 MCD is presented in Table 7.

Table 6. Delaware 1996 Milestone Compliance Demonstration Results*

| Emission (TPD) | 1996 Required Emission Target | 1996 PEI Actual Emission | PEI vs. Target** Lower(-)/ Higher(+) |
|----------------|-------------------------------|--------------------------|--------------------------------------|
| VOC | 115.81 | 101.87 | -12.0% |

*Data obtained from Reference 16. ** % = (1996 PEI - 1996 Target)/1996 Target.

Table 7. Delaware 1999 Milestone Compliance Demonstration Results*

| Emission (TPD) | 1999 Required Emission Target | 1999 PEI Actual Emission | PEI vs. Target** Lower(-)/ Higher(+) |
|----------------|-------------------------------|--------------------------|--------------------------------------|
| VOC | 110.21 | 88.69 | -19.5% |
| NOx | 148.96 | 117.68 | -21.0% |

*Data obtained from Reference 17. ** % = (1999 PEI - 1999 Target)/1999 Target.

As indicated in Table 6, the 1996 PEI VOC emission was 12.0% lower than the 1996 VOC emission target required by CAAA. As indicated in Table 7, the 1999 PEI VOC and NOx emissions were 19.5% and 21.0% lower than the required 1999 VOC and NOx emission targets,

respectively. Therefore, for these two milestone years (i.e., 1996 and 1999), Delaware demonstrated that its VOC and/or NOx emissions were fully in compliance with the emission reduction requirements set forth by CAAA.

3.0 Delaware 2002 Milestone Compliance Demonstration

In the 2002 RPP, Delaware determined that the 2002 targets of VOC and NOx emissions for its nonattainment area (i.e., Kent and New Castle Counties) were 101.54 TPD and 143.12 TPD, respectively, in the peak ozone season (Table 2). In the recently compiled 2002 PEI, Delaware has shown that the actual total VOC and NOx emissions in 2002 are 78.12 TPD and 144.49 TPD, respectively, in the peak ozone season (Table 5). A comparison of the 2002 emission targets and the 2002 PEI emissions is presented in Table 8. As indicated in Table 8, the VOC emission in the 2002 PEI is 23.42 TPD lower than the target level, while the NOx emission in the 2002 PEI is 1.37 TPD higher than the 2002 target

Table 8. Comparison of 2002 Emission Targets and 2002 Inventoried Emissions.

| Emission (TPD) | 2002 Required Emission Target | 2002 PEI Actual Emission | Difference (PEI - Target) |
|----------------|-------------------------------|--------------------------|---------------------------|
| VOC | 101.54 | 78.12 | -23.42 |
| NOx | 143.12 | 144.49 | +1.37 |

The 1990 baseline emission levels for VOC and NOx, as adjusted to 2002, are 133.15 TPD and 158.40 TPD, respectively (Reference 5). Thus, the VOC-to-NOx substitution ratio is 133.15:158.40 = 1:1.19. Using this ratio, the equivalent VOC emission for the over-target 1.37 TPD NOx emission can be calculated to be 1.37/1.19 = 1.15 TPD. Subtracting this number from the 23.42 TPD under-target VOC emission gives 23.42 - 1.15 = 22.27 TPD. In other words, the 2002 overall or net emission, expressed as an equivalent VOC emission, is 22.27 TPD lower than the 2002 emission target. Therefore, Delaware has demonstrated herein that its 2002 emissions are in compliance with the emission reduction requirements set forth by CAAA.

4.0 References

1. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.
2. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*. Air Quality Management Section, Department of Natural Resources and Environmental

Control, Dover, Delaware, revised as of May 3, 1994.

3. *The Delaware 15% Rate-of-Progress Plan.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.

4. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997, as amended in June 1999.

5. *The Delaware 2002 Rate-of-Progress Plan for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000, as amended in December 2000.

6. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

7. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration,* Ozone/Carbon Monoxide Branch, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711, February 18, 1994.

8. *Regulations Governing the Control of Air Pollution.* Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware.

9. *Procedures for Preparing Emissions Projections.* EPA-450/4-91-019, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, July 1991.

10. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans.* EPA-452/R-93-002, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans.* EPA-452/R-93-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

12. *The 1993 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, January 1998.

13. *The 1996 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, November 1999.

14. *The 1999 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO.* Air Quality Management Section, Department of Natural Resources and

Environmental Control, Dover, Delaware, June 2002.

15. *The 2002 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, June 2004.

16. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000.

17. *Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, June 2003.

DIVISION OF AIR AND WASTE MANAGEMENT

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

REGISTER NOTICE

1. Title Of The Regulations:

AMENDMENTS TO DELAWARE PHASE II ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NON-ATTAINMENT AREA: Mid-Course Review on Progress toward Attainment of the 1-Hour Ozone National Ambient Air Quality Standard.

2. Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) require Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate its capability of attaining the 1-hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone in Kent and New Castle Counties by 2005. This SIP revision, termed the Phase II Attainment Demonstration, was initially submitted to the EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003.

The document presented herein amends Delaware's Phase II Attainment Demonstration SIP revision again. The document analyzes emission trends of VOC and NOx and ambient air quality data regarding ground level ozone. The document concludes that (1) Delaware's current control strategies are adequate toward attaining the 1-hour ozone standard by 2005 and, (2) those control strategies have ensured a beginning of an adequate progress toward attaining of the 8-hour ozone standard.

- 3. Possible Terms Of The Agency Action:**
None.
- 4. Statutory Basis Or Legal Authority To Act:**
7 Del.Ch., Chapter 60, Environmental Control.
- 5. Other Regulations That May Be Affected By The Proposal:**
None.
- 6. Notice Of Public Comment:**
A public hearing will be held on December 1, 2004, beginning at 6:00 p.m., in AQM Conference Room, Priscilla Building, 156 South State Street, Dover, DE 19901.
- 7. Prepared By:**
Frank F. Gao, Project Leader, (302) 323-4542, October 12, 2004.

| | |
|-------|---|
| OAQPS | Office of Air Quality Planning and Standards of EPA |
| OTAG | Ozone Transport Assessment Group |
| OTC | Ozone Transport Commission |
| OTR | Ozone Transport Region |
| PCP | Planning and Community Protection Branch of DNREC |
| PEI | Periodic Emission Inventory |
| RACT | Reasonably Available Control Technology |
| RPP | Rate-of-Progress Plan |
| RVP | Reid Vapor Pressure |
| SIP | State Implementation Plan |
| TPD | Tons per day |
| TPY | Tons per year |
| VOC | Volatile Organic Compound |

Summary

This document fulfills Delaware's commitments to conduct a mid-course review (MCR), by December 31, 2004, to assess adequacy of its emission control measures and progress toward attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS).

Under the requirements of sections 182(b)(1) and 182(d) of the Clean Air Act Amendments of 1990 (CAAA) regarding the 1-hour ozone NAAQS, Delaware has implemented and committed to implement a comprehensive list of control measures to reduce emissions of volatile organic compounds (VOC) and oxides of nitrogen (NOx) in its two severe nonattainment counties, i.e., Kent and New Castle Counties. Those measures include federal and state rules and controls that cover a large variety of emission sources, including point, area, on-road mobile and off-road mobile sources. This document show that (1) Delaware's control measures have produced significant and consistent VOC and NOx emission reductions since 1990, (2) as a result of those emission reductions, the ambient air quality regarding ozone has been significantly improved toward attainment of the 1-hour ozone standard in 2005, and (3) therefore, Delaware's current control framework is adequate and no additional controls will be needed before EPA revokes the 1-hour ozone standard in June of 2005. However, it must be noted that ozone and ozone precursor transport continues to negatively impact Delaware's air quality, and that EPA should cause such transport to be mitigated prior to Delaware's 8-hour ozone attainment date of 2010.

1.0 Introduction

1.1 Background

Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS)

Proposal

DELAWARE PHASE II ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA- WILMINGTON-TRENTON OZONE NON- ATTAINMENT AREA

Mid-Course Review on Progress toward Attainment of the 1-Hour Ozone National Ambient Air Quality Standard

**Delaware Department Of Natural Resources And
Environmental Control Dover, Delaware**

November 2004

Acronym List

| | |
|-------|--|
| AQM | Air Quality Management Section of DNREC |
| CAAA | Clean Air Act Amendments of 1990 |
| CMSA | Consolidated Metropolitan Statistical Area |
| CO | Carbon Monoxide |
| DAWM | Division of Air and Waste Management of DNREC |
| DNREC | Delaware Department of Natural Resources and Environmental Control |
| EPA | United States Environmental Protection Agency |
| FMVCP | Federal Motor Vehicle Control Program |
| I/M | Inspection and Maintenance |
| LEV | Low Emission Vehicle |
| MCD | Milestone Compliance Demonstration |
| MCR | Mid-Course Review |
| NAA | Nonattainment Area |
| NAAQS | National Ambient Air Quality Standard |
| NLEV | National Low Emission Vehicle |
| NOx | Oxides of Nitrogen |

for ground-level ozone (Reference 1). The CAAA requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard will be attained by 2005 in these two counties with necessary and adequate control measures to reduce emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x). That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003 (Reference 2).

In order to settle a complaint filed by six environmental groups in U.S. District Court, EPA required, as a condition of approval of the Phase II Attainment Demonstration SIP of each state in the Philadelphia-Wilmington-Trenton non-attainment area, that a mid-course review (MCR) be conducted to evaluate the progress being made toward attainment of the 1-hour ozone standard (Reference 3). The results of the MCR were required to be submitted to EPA by December 31, 2003, and would be used to determine if any additional controls would be necessary to ensure the attainment by 2005. Pursuant to this EPA requirement, Delaware committed in its January 2000 SIP revision to perform an MCR by December 31, 2003. This MCR requirement was also imposed on other states with severe non-attainment areas with respect to the 1-hour ozone standard.

Following the above, an order of the U.S. Court of Appeals for D.C. Circuit delayed the implementation of EPA's NO_x Transport SIP Call from 2003 to 2004. The NO_x Transport SIP Call is a significant part of the overall 1-hour ozone attainment strategy. In response to this court order, EPA allowed states to revise the MCR due date to a date after May 31, 2004. The later MCR date is believed to better serve the MCR purpose (i.e., to enable states to evaluate the adequacy of their attainment strategy, and to facilitate initiation of additional control measures if necessary). Many states affected by the NO_x SIP Call emission reductions, including those in the Ozone Transport Region (OTR), have revised their commitment to conduct and submit the MCR on a schedule later than May 31, 2004 (Reference 4). In its June 2003 amendments to the Phase II Attainment demonstration SIP revision, Delaware also changed its original MCR completion date from December 31, 2003 to December 31, 2004.

This document fulfills Delaware's commitments in its January 2002 and June 2003 amendments to the Phase II Attainment Demonstration SIP revision to conduct a MCR by December 31, 2004.

1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is Delaware Department of

Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Ali Mirzakhilili, Program Administrator. The working responsibility for Delaware's air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section, under the management of Raymond H. Malenfant, Program Manager and Ronald A. Amirikian, Planning Supervisor. Frank F. Gao, Environmental Engineer in the Airshed Evaluation and Planning Program in the PCP Branch, is the project leader and principal author of this document. Questions or comments regarding this document should be addressed to F. Gao, (302)323-4542, AQM, 715 Grantham Lane, New Castle, DE 19720, or be e-mailed to Frank.Gao@state.de.us.

2.0 Emission Reduction Requirements and Control Strategies

2.1 Rate-of-Progress Requirements

In order for the severe nonattainment areas (NAA) to attain the 1-hour ozone standard by 2005, Sections 182(b)(1) and 182(d) set forth the following specific rate-of-progress emission reduction requirements: (1) to achieve by 1996 an actual VOC emission reduction of at least 15% of its 1990 VOC emission level, and (2) to achieve an additional 3% per year VOC and/or NO_x emission reductions from the 1990 emission levels between 1997 and 2005.

Delaware developed its 1990 Base Year Emission Inventory in May 1994, and approved by EPA in March 1996 (Reference 5). This 1990 base year emission inventory is used as the basis for Delaware to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard in 2005. A summary of VOC and NO_x emissions from all anthropogenic sources in Kent and New Castle Counties in the 1990 Base Year Inventory is presented in Table 1.

Table 1. Summary of VOC and NO_x Emissions (in TPD) in 1990 Base Year Inventory*

| 1990 Base Year Anthropogenic Source | Kent | | New Castle | | Total NAA | |
|---|--------------|-----------------|---------------|-----------------|---------------|-----------------|
| | VOC | NO _x | VOC | NO _x | VOC | NO _x |
| Total Emissions (TPD) | 32.59 | 25.84 | 113.26 | 137.00 | 145.84 | 162.85 |

*Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 5).

To meet the rate-of-progress emission reduction requirements, Delaware has developed the following four rate-of-progress plans (RPP) for its two severe nonattainment counties (i.e., Kent and New Castle

Counties): the 1996 RPP, the 1999 RPP, the 2002 RPP and the 2005 RPP. The 1996 RPP specifies Delaware's control strategies to achieve the required 15% VOC emission reduction. The 1999 RPP, the 2002 RPP and the 2005 RPP describe Delaware's emission control strategies to achieve an additional 9% VOC and/or NOx reductions in the 3-year periods of 1997-1999, 2000-2002, and 2003-2005, respectively. By meeting the rate-of-progress emission reduction requirements, these RPPs set forth VOC and/or NOx emission targets for 1996, 1999, 2002, and 2005, which are defined as rate-of-progress milestone years. A summary of VOC and /or NOx emission targets for individual milestone years are presented in Table 2. Details of how to estimate emission reductions and emission targets can be found in References 6, 7, 8, 9, 10, and 11.

Table 2. Delaware VOC and/or NOx Emission Targets for Individual Milestone Years.

| Emission Targets (TPD) | 1996 Milestone Year | 1999 Milestone Year | 2002 Milestone Year | 2005 Milestone Year |
|------------------------|---------------------|---------------------|---------------------|---------------------|
| VOC | 115.82 | 110.21 | 101.54 | 95.41 |
| NOx | * | 148.96 | 143.12 | 135.37 |

*NOx reduction was not required for the 1996 milestone year.

As mentioned above, from 1990 base year to 2005 attainment year, Delaware is required to achieve a total of 42% emission reduction from the 1990 base year level, in which 15% reduction must be obtained from VOC emissions between 1990 and 1996. To achieve this 42% emission reduction goal by 2005, Delaware has implemented and/or proposed numerous control measures. These control measures include federal mandatory rules and Delaware state regulations being promulgated prior to the peak ozone season of 2005. These rules and regulations cover a large variety of VOC and NOx emission sources in all anthropogenic source sectors in Kent and New Castle Counties. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations can be found in Delaware 2005 RPP (Reference 10), and Delaware Regulations Governing Control of Air Pollution (Reference 12).

Table 3. Control Measures for VOC and NOx Emissions in 2005 RPP.

| Control Measures and Regulations | Creditability | Emission Controlled | Effective Date |
|----------------------------------|---------------|---------------------|----------------|
|----------------------------------|---------------|---------------------|----------------|

| Point Source Controls | | | |
|--|------------|-----|-------------|
| RACT "Catch-Ups" in Kent County: | | | |
| Solvent Metal Cleaning Surface Coating of Metal Furniture | Creditable | VOC | 31-May-95 |
| Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip. | Creditable | VOC | 31-May-95 |
| New RACT Regulations: | | | |
| Bulk Gas. Marine Tank Vessel Loading Facil. | Creditable | VOC | 31-Dec-95 |
| SOCMI Reactor Proc. and Distillation Operat. Batch Processing Operations | Creditable | VOC | 01-Apr-96 |
| Offset Lithography | Creditable | VOC | 01-Apr-96 |
| Aerospace Coatings Industrial Cleaning Solvents | Creditable | VOC | 01-Apr-96 |
| Non-CTG RACT | Creditable | VOC | 29-Nov-94 |
| Delaware NOx RACT | Creditable | NOx | 31-May-95 |
| Regional Control: Federal NOx SIP Call | Creditable | NOx | 01-Jun-04 |
| Federal Benzene Waste Rule | Creditable | VOC | Spring 1995 |
| Sanitary Landfills Irreversible Process Changes | Creditable | VOC | 09-Oct-93 |
| Stationary Area Source Controls | | | |
| RACT "Catch-Ups" in Kent County: | | | |
| Solvent Metal Cleaning | Creditable | VOC | 31-May-95 |
| Cutback Asphalt | Creditable | VOC | 31-May-95 |
| New RACT Regulations: | | | |
| Stage I Vapor Recovery-Gas. Dispensing Facil. | Creditable | VOC | 15-Nov-94 |
| Emulsified Asphalt Motor Vehicle Refinishing | Creditable | VOC | 31-May-95 |
| Offset Lithography | Creditable | VOC | 01-Apr-96 |
| Aerospace Coatings | Creditable | VOC | 01-Apr-96 |

| | | | |
|---|---------------|----------|-----------------|
| Stage II Vapor Recovery | Creditable | VOC | 15-Nov-94 |
| Delaware Open Burning Rule | Creditable | VOC, NOx | 08-Feb-95 |
| Off-Road Mobile Source Controls | | | |
| Reformulated Fuel | Creditable | VOC | 01-Jan-95 |
| New Emission Standards | | | |
| Spark Ignition Engines | Creditable | VOC, NOx | Court-Ordered |
| Compression Ignition Engines | Creditable | VOC, NOx | Court-Ordered |
| Marine Engines | Creditable | VOC | Ordered 31-Dec- |
| Locomotives | Creditable | NOx | 01 |
| On-Road Mobile Source Controls | | | |
| FMVCP and RVP | Noncreditable | VOC, NOx | Pre-1990 |
| Tier I Vehicle Emissions Standards | Creditable | VOC, NOx | Model Yr 1994 |
| Basic I/M for Kent County | Creditable | VOC, NOx | 01-Jan-91 |
| ATP and Pressure Test for Kent County | Creditable | VOC, NOx | 01-Jan-95 |
| ATP and Pressure Test for New Castle County | Creditable | VOC, NOx | 01-Jan-95 |
| Reformulated Fuel Phase II | Creditable | VOC | 01-Jan-95 |
| LEV Program | Creditable | VOC, NOx | 01-Nov-99 |
| Heavy Duty Diesel Engines | Creditable | VOC, NOx | Model Yr 2004 |
| Tier II Emissions Standards and Low Sulfur Fuel | Creditable | VOC, NOx | 01-Jan-04 |

2.2 Attainment Demonstration Requirements on Emission Reductions

As mentioned earlier, Delaware submitted to EPA its original Phase II Attainment Demonstration SIP revision for the Delaware part of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area in 1998, and amended it several times thereafter. In this Phase II Attainment Demonstration SIP revision, Delaware uses results from comprehensive photochemical models, which incorporate all emission control measures in Table 3, to demonstrate Delaware's capability of attaining the 1-hour ozone standard in 2005. In December 1999, however, EPA decided that VOC and NOx emission reductions from all control measures being contained in all involved states' 2005 RPPs would not be enough to guarantee the entire Philadelphia-Wilmington-Trenton Ozone Nonattainment Area to attain the 1-hour ozone standard in 2005, and therefore the states in this entire nonattainment area must implement additional

emission controls to offset the emission reduction shortfalls (Reference 13).

To meet EPA's requirements regarding the emission reduction shortfalls, Delaware, along with other states in the Ozone Transport Region (OTR), developed some new or more stringent controls or rules to achieve additional VOC and NOx emission reductions. Delaware submitted to EPA in October 2001 its amendments to the Phase II Attainment Demonstration SIP revision, which specified those promulgated rules to achieve these additional emission reductions (Reference 13). A summary of these rules is presented in Table 4.

Table 4. Additional Controls and Rules to Address Emission Reduction Shortfalls.

| Control Measures and Regulations Addressing "Shortfalls" | Creditability | Emission Controlled | Effective |
|--|---------------|---------------------|-----------|
| | | | Date |
| Control of NOx Emissions from Industrial Boilers | Creditable | NOx | 1-May-05 |
| Consumer Products | Creditable | VOC | 1-May-05 |
| Portable Fuel Containers | Creditable | VOC | 1-May-05 |
| Architect. & Industrial Maintenance Coatings | Creditable | VOC | 05 |
| Mobile Equipment | Creditable | VOC | 1-May-05 |
| Repair and Refinishing | Creditable | VOC | 05 |
| Solvent Cleaning and Drying | Creditable | VOC | 1-May-05 |

3.0 Demonstration of Adequate Progress toward Attainment

3.1 Emission Trends from 1990 to 2002

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. These periodic emission inventories cover all sources included in Delaware's 1990 Base Year Emission Inventory and serve to monitor the overall effectiveness of control measures specified in individual rate-of-progress plans as described in the previous section. Delaware submitted to EPA its 1993 periodic emission inventory (PEI) in January 1998, its 1996 EPI in November 1999, its 1999 PEI in June 2002, and its 2002 PEI in June 2004. For the purpose of demonstrating emission trends, a summary of VOC and NOx emissions (in the unit of TPD) in the 1993 PEI, 1996 PEI, 1999 PEI and 2002 PEI is presented in Table 5.

Table 5. Summary of Delaware 1993, 1996, 1999 and 2002 Emission Inventories.

| All Source | 1993 PEI | | 1996 PEI | | 1999 PEI | | 2002 PEI | |
|------------|----------|--------|----------|--------|----------|--------|----------|--------|
| | VOC | NOx | VOC | NOx | VOC | NOx | VOC | NOx |
| Total | | | | | | | | |
| Emissions | 135.80 | 172.80 | 101.87 | 121.55 | 88.69 | 117.68 | 78.12 | 144.49 |

Comparison of the emission targets in Table 2 and the PEI emissions in Table 5 indicates that (1) VOC emissions in Delaware’s two nonattainment counties are well below the targets since 1996, and in 2002 the PEI VOC emission is 23.42 TPD below the target, (2) NOx emission is below the 1999 target (the first year when the NOx target is required), but exceeds the 2002 target by 1.37 TPD. It should be pointed out that this over-target NOx emission of 1.37 TPD is equivalent to a VOC emission of 1.15 TPD, as explained in Delaware’s 2002 Milestone Compliance Demonstration document (Reference 14). In other words, the overall or net emission in 2002, if expressed as a VOC equivalent emission, is still 22.27 TPD (i.e., 23.42 – 1.15 = 22.27) below the required target. Therefore, it can be concluded that, with all controls and rules in Delaware’s RPPs being implemented, the overall VOC and NOx emission trend from 1990 to 2002 in Delaware’s NAA is dramatically decreasing and well below the milestone year emission targets required by CAAA.

At the present time (i.e., when this MCR document is being developed), a comparison of the 2005 actual emissions with the 2005 RPP emission targets is not possible because the 2005 emission inventory is not available. However, Delaware believes that with additional controls and rules being implemented in the 2003-2005 period, such as the Federal NOx Transport SIP Call and those specified in Delaware’s Phase II Shortfalls SIP, the decreasing VOC/NOx emission trends in Delaware will continue and be well below the 2005 emission targets under the 1-hour ozone standard.

3.2 Monitored Ambient Ozone Data under the 1-Hour Standard

As pointed out in the previous subsection, the overall VOC and NOx emissions in Delaware’s NAA has been continuously decreasing since 1990 due to timely implementation of effective control measures over a large variety of emission sources. As a result, the ambient air quality in Delaware regarding ozone has been continuously improved since 1996, the first rate-of-progress milestone year.

The improvement in ozone ambient air quality in Delaware’s NAA can be demonstrated by changes in the number of exceedances of the 1-hour ozone standard. A summary of the monitored exceedances since 1997 is presented in Table 6 (the 1996 data were missed). Table 6

indicates that, by the attainment definition of the CAAA, Kent County has been in attainment of the 1-hour ozone standard since 2002. For New Castle County, there has been only one extra exceedance that keeps it in the nonattainment status since 2002.

Table 6. Delaware NAA’s 1-Hour Ozone Standard Exceedances after 1996.

| County | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
|------------|------|------|------|------|------|------|------|------|------|
| Kent | * | 1 | 3 | 1 | 2 | 1 | 0 | 1 | 0 |
| New Castle | * | 4 | 3 | 4 | 1 | 0 | 3 | 1 | 0 |

* The 1996 data were missed.

The improvement in ozone air quality can be also seen from the design value data. A summary of the 1-hour ozone design values for the two nonattainment counties after 1996 is present in Table 7. The design values are based on the ambient ozone concentrations monitored in the 1996-2004 period. These monitored data indicate that the 1-hour ozone design value in Kent County has been below the 1-hour ozone standard in the past three 3-year periods. The 1-hour ozone design value in New Castle County has been slightly above the 1-hour ozone standard, but below the truncation margin (i.e., 0.124 ppm), in the past two 3-year periods. According to CAAA’s attainment/nonattainment designation standards and procedures, both Kent and New Castle Counties could be currently given an attainment status.

Table 7. Delaware NAA’s 1-Hour Ozone Design Values (ppm).

| County | 1996-98 | 1997-99 | 1998-00 | 1999-01 | 2000-02 | 2001-03 | 2002-04 |
|------------|---------|---------|---------|---------|---------|---------|---------|
| Kent | * | 0.124 | 0.126 | 0.126 | 0.117 | 0.117 | 0.112 |
| New Castle | * | 0.141 | 0.132 | 0.130 | 0.133 | 0.122 | 0.122 |

* The 1996 data were missed.

In summary, the ambient ozone data in Table 6 and 7 have shown that Delaware’s NAA has maintained a consistent and adequate progress toward attainment of the 1-hour ozone standard in 2005. With some upcoming controls and rules, especially the Federal NOx SIP Call, it can be reasonably assumed that this adequate progress will continue into 2005 toward the attainment goal of the 1-hour ozone standard. However, it should be noted that while Delaware is on track to attain compliance with the 1-hour ozone standard, and that Delaware is now moving forward with additional reductions to meet the 8-hour ozone standard, significant negative impact from upwind states will prevent Delaware from attainment of the 8-hour ozone standard by 2010. The EPA must mitigate this impact prior to Delaware’s 2010 8-

hour ozone attainment date.

3.3 Monitored Ambient Ozone Data under the 8-Hour Standard

In April 2004, all three Delaware counties were designated as moderate nonattainment areas under the 8-hour ozone standard (Reference 15). In its final rule for implementing the 8-hour ozone standard, EPA indicates that states can use the mid-course-reviews to ensure that progress is being made consistent with needs for the 8-hour NAAQS (Reference 16). To this end, a summary of the 8-hour ozone design values for Delaware's three counties is presented in Table 8.

Table 8. Delaware NAA's 8-Hour Ozone Design Values (ppm).

| County | 1996-98 | 1997-99 | 1998-2000 | 1999-2001 | 2000-02 | 2001-03 | 2002-04 |
|------------|---------|---------|-----------|-----------|---------|---------|---------|
| Kent | 0.096 | 0.099 | 0.097 | 0.093 | 0.093 | 0.089 | 0.084 |
| New Castle | 0.096 | 0.099 | 0.097 | 0.097 | 0.097 | 0.094 | 0.089 |
| Sussex | 0.097 | 0.099 | 0.098 | 0.095 | 0.094 | 0.091 | 0.085 |

From Table 8, it can be seen that the 8-hour ozone design values in all three counties exhibit a clear decreasing trend toward attaining the 8-hour standard. This trend is in fact in parallel to the 1-hour ozone design value trend exhibited in Table 7. This fact indicates that the control measures being implemented under the 1-hour ozone standard, and being reviewed in this document (Table 3 and Table 4), have already initiated a progress that is consistent with the needs toward attaining the 8-hour ozone standard.

3.4 Summary and Concluding Remarks

3.4.1 Since 1996, Delaware has implemented numerous control measures over a large variety of VOC and NO_x emission sources to meet the CAAA requirements for attaining the 1-hour ozone standard. Those control measures have led to consistent and significant VOC and NO_x emission reductions.

3.4.2 Since 1996, as a result of the above emission reductions, Delaware's ambient air quality regarding the 1-hour ozone standard has been continuously improved, and the progress toward attaining the 1-hour ozone standard appears to be adequate.

3.4.3 The control measures under the 1-hour ozone standard have ensured a beginning of adequate progress toward attaining of the 8-hour ozone standard. However, to maintain this progress and ensure attainment of the 8-hour ozone standard, additional control measures are needed in Delaware, and the EPA must cause both the ozone and ozone precursor transport into Delaware, to be mitigated from upwind states before the attainment year of 2010.

3.4.4 The analyses in this document shows that

Delaware's control framework, including control measures being implemented and those promulgated but not yet in effect, is adequate under the CAAA requirements toward attaining the 1-hour ozone standard, and provide an adequate basis for the transition to planning for attainment of the 8-hour ozone standard.

4.0 References

1. *Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.
2. *Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*. Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, December, 2000, July 2001, and June 2003.
3. *Notice of Proposed Action on Attainment Demonstrations for the 1-Hour National Ambient Air Quality Standard for Ozone*. Federal Register Vol. 64, No. 241, pp 70317-70319, December 16, 1999.
4. *Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration*. Guidance Memorandum from L.N. Wegman, Director, Air Quality Strategies and Standard Division, and J.D. Mobley, Acting Director, Emission Monitoring and Analysis Division, Office of Air Quality Planning and Standards, US EPA, March 28, 2002.
5. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NO_x*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.
6. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.
7. *The Delaware 15% Rate-of-Progress Plan*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.
8. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997, as amended in June 1999.
9. *The Delaware 2002 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000, as amended in December 2000.
10. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section,

Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

11. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration*, Ozone/Carbon Monoxide Branch, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711, February 18, 1994.

12. *Regulations Governing the Control of Air Pollution*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware.

13. *Measures to Meet EPA Identified Shortfalls in the Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, October, 2001.

14. *Delaware 2002 Milestone Compliance Demonstration for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, proposed in November 2004.

15. *Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standard*, US EPA. Federal Register Vol. 69, No. 84, pp 23858-23951, April 30, 2004.

16. *Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 1*, US EPA. Federal Register Vol. 69, No. 84, pp 23951-24000, April 30, 2004.

**DELAWARE HOME RELOCATION
AUTHORITY TRUST FUND**
NOTICE OF PUBLIC HEARING

The Delaware Manufactured Home Relocation Authority (the "Authority") will hold a public hearing to discuss proposed regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion. The Authority has set an initial \$3.00 monthly assessment for deposit into the Trust Fund, effective April 1, 2004. Under the statute, one-half of the monthly assessment is the obligation of the Tenant of a rented lot and one-half of the assessment is the obligation of the Landlord. The monthly assessments collected by the Authority are deposited into the Trust Fund, and the Authority is responsible for administering this fund. To carry out its statutory responsibilities, the Authority has been directed to, among other things, establish procedures under which applicants for payment from the Authority may be approved and to set maximum benefits that may be payable to applicants under certain circumstances.

Pursuant to its statutory authority, the Authority is proposing for adoption a comprehensive set of regulations to be used for the administration of the Trust Fund. The proposed regulations published herein will, among other things: (a) establish criteria for tenant benefits, including the maximum relocation payment available to a tenant for a single section home and a multi-section home and the maximum benefits available to a Tenant whose home has been determined to be non-relocatable; (b) criteria for Landlord benefits, including the maximum relocation benefits for manufactured homes that have been abandoned or determined to be non-relocatable; (c) application procedures to be followed by applicants for benefits; and (d) application review procedures.

The public hearing will be on Tuesday, November 30, 2004 beginning at 3:30 p.m. and ending at 6:30 p.m. in the Richardson Conference Room located at the offices of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

Anyone wishing to present oral comments at this hearing should contact Mr. William A. Denman at (302) 678-3262 by November 22, 2004. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony, should submit such comments by December 1, 2004 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF LANDSCAPE ARCHITECTS
PUBLIC NOTICE**

The Delaware Board of Landscape Architects is proposing to revise its rules and regulations pursuant to 24 **Del.C.** §205(a)(1). The Board is proposing changes to the following Regulation:

Regulation 7.1.2 regarding the Definition and Scope of Continuing Education.

Continuing Education Hourly Requirements and Continuing Education Reporting and Documentation.

A public hearing will be held on the proposed Rules and Regulations on Thursday, December 9, 2004 at 9:00 a.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. 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.

The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Sherry Clark at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Persons may view the proposed changes to

the Regulations between the hours of 8:15 a.m. to 4:15 p.m., Monday through Friday, at the Board's office at the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. There will be a reasonable fee charged for copies of the proposed changes.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF CHIROPRACTIC
PUBLIC NOTICE**

The Delaware Board of Chiropractic in accordance with 24 **Del.C.** §706(a)(1) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of chiropractic services.

A public hearing will be held on December 16, 2004 at 8:45 a.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Chiropractic, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF ELECTRICAL EXAMINERS
PUBLIC NOTICE**

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(b) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the work of an electrician.

A public hearing will be held at 9:00 a.m. on December 1, 2004 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board Electrical Examiners, 861 Silver Lake Blvd, Cannon

Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE
PUBLIC NOTICE**

Pursuant to 74 Del. Laws. c.262, (Senate Bill No. 229 of the 142 General Assembly, 2004, as amended), the Board was directed to promulgate regulations specifically identifying those crimes which are substantially related to the practice of medicine and the practice of licensed respiratory care and practice as a licensed physician's assistant.

The Board of Medical Practice believes that the State of Delaware has a compelling public policy interest in ensuring that its licensed professionals not only have specified levels of educational and professional competence but also possess sufficient character and judgment necessary to practice safely in their chosen fields and to do so in a manner which will not undermine the community's confidence in the expertise and professionalism of the members of the profession. Licensed professionals, particularly those in health care related fields, often come into contact with clients and patients and other members of the public at times when they may be sick, infirmed or otherwise extremely vulnerable to undue influence or other forms of misuse, fraud and abuse. It is therefore critical that all reasonable steps are taken to determine, to the extent possible, that the regulation of such professionals takes into consideration not only the individual's technical competence but his or her demonstrated propensity to behave in a way that does not expose the client population to risk or diminish legitimate expectations of honest and honorable behavior by such licensed health care professionals.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF MEDICAL PRACTICE RESPIRATORY
CARE PRACTICE ADVISORY COUNCIL
PUBLIC NOTICE**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Ch. 101 and 24 **Del.C.** §1770B(e)(5), the Respiratory Care Practice Advisory Council of the Delaware Board of

Medical Practice proposes to revise its Rules and Regulations. The proposed revisions will delete a subsection regarding the accumulation of continuing education and add a new section to address and regulate the administration of sedation and analgesia by Respiratory Care Practitioners.

A public hearing will be held on the proposed Rules and Regulations on January 18, 2005 at 1:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling her at (302) 744-4520.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF PLUMBING EXAMINERS
PUBLIC NOTICE**

The State Board of Plumbing Examiners in accordance with 24 **Del.C.** §1805(b) has proposed changes to its rules and regulations as mandated by SB 229. The proposal identified crimes that are substantially related to plumbing services.

A public hearing will be held at 9:00 a.m. on December 14, 2004 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board Plumbing Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF OPTOMETRY
PUBLIC NOTICE**

The Delaware Board of Optometry in accordance with 24 **Del.C.** §2104(a)(1) has proposed changes to its rules and

regulations as mandated by SB 229. The proposal identifies crimes that are substantially related to the provision of optometric services.

A public hearing will be held on December 16, 2004 at 6:45 p.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Optometry, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE
PUBLIC NOTICE**

The Delaware Board of Veterinary Medicine in accordance with 24 **Del.C.** §3306(a) has proposed changes to its rules and regulations as mandated by SB 229. The proposed regulations have identified crimes that are substantially related to the provision of veterinary medicine.

A public hearing will be held at 1:00 PM on December 14, 2004 in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Veterinary Medicine, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**PUBLIC SERVICE COMMISSION
PUBLIC NOTICE**

The Delaware General Assembly has enacted legislation which granted the Delaware Public Service Commission (the "Commission") jurisdiction over wastewater utilities serving fifty or more customers in the aggregate. The legislation also

made applications by such wastewater utilities for a Certificate of Public Convenience and Necessity ("CPCN") subject to the jurisdiction of the Commission. The new law is found at 74 **Delaware Laws**, Ch. 317. In the past, wastewater utilities filed applications for CPCNs with the Department of Natural Resources and Environmental Control ("DNREC"). The new legislation became effective on July 6, 2004.

In connection with the exercise of jurisdiction over wastewater utilities, the Commission is promulgating proposed new regulations to govern wastewater utilities. The first regulation contains definitions of terms used in the regulations. The second addresses the scope of the regulations themselves, which are intended to govern certain practices and procedures before the Commission relating to wastewater utilities.

Two regulations set forth requirements for an application for a CPCN, including requirements for a new wastewater utility that has never before been awarded a CPCN. A related regulation addresses the review, by the Commission's Staff, of a new CPCN application for compliance with statutes, applicable Rules of the Commission, and the regulations. A second related regulation requires the Commission Staff to cooperate with DNREC, the Department of Public Health, and other interested state, local and federal authorities, when an application for a CPCN is under review.

Two of the regulations address the notice to be given landowners in the proposed service territory covered by a wastewater utility's CPCN application, and the time limits within which affected landowners must object to the CPCN, and/or request a public hearing. One of the regulations governing notice contains a proposed statement to the landowners that would have to be included in the notice sent by a wastewater utility applying for a CPCN.

One of the new regulations is designed to govern proceedings to suspend or revoke a CPCN, and identifies the factors that must be present for the Commission to make a finding of good cause to suspend or revoke a CPCN. The same regulation confirms that such proceedings before the Commission must be conducted in accordance with applicable provisions of the Delaware Administrative Procedures Act, 29 *Del. C. Ch. 101, Subchapter III*.

The final regulation relates to municipalities, government agencies, and wastewater authorities and districts that engage in or desire to engage in the business of a wastewater utility.

The Commission has authority to promulgate the regulations pursuant to 26 *Del. C. § 209 (a)*, 29 *Del. C. § 10111 et seq.*, and 74 **Delaware Laws**, Ch. 317.

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the

Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before November 30, 2004.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before November 30, 2004.

In addition, the Commission will conduct at least one public hearing concerning the proposed regulations on December 8, 2004, beginning at 10:00 AM. The hearing will continue on December 9, 2004 at 10:00 AM, if necessary. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

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

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to knickerson@state.de.us.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE

The Thoroughbred Racing Commission proposes to enact a new Rule, Rule 11.14.6, to provide for a recommended \$1,000 fine for owners or trainers who scratch their horses in Delaware in order to race in another jurisdiction. The Commission also proposes to amend Rule 19.3.2 to raise the appeal bond from \$250 to \$400 to cover increased costs associated with court reporter fees. The Commission will hold a public hearing on these proposed changes on January 11, 2005 at 10:15 a.m. at the Delaware

Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. The Commission will accept written comments on the proposed rules until January 10, 2005. Written comments should be sent to John Wayne, Administrator of Racing.

89 Kings Highway, Dover

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are invited on these proposed regulations and should be sent to:

Elise MacEwen, RN
 Division of Long Term Care Residents Protection
 Mill Road, Suite 308
 Wilmington, DE 19806

Written comments will be accepted until the conclusion of the December 2 public hearing.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, November 18, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION PUBLIC NOTICE

The Department of Health and Social Services, Division of Long Term Care Residents Protection, has drafted proposed regulations pertaining to training and qualifications of nursing assistants and certified nursing assistants. These proposed regulations clarify and amend certain eligibility criteria for certification as a certified nursing assistant.

These proposed regulations also clarify the responsibility of federally certified nursing facilities to pay the costs of training nursing assistants in accordance with federal regulations at 42 CFR §483.152. The proposed regulations pertaining to payment of the costs of training nursing assistants have been the subject of previous public hearings and have been revised in response to comments received at the public hearings. A discussion of the comments received at those public hearings which were not incorporated into the proposed regulations will appear with the final order when the proposed regulations are published as final regulations.

Invitation For Public Comment

Public hearings will be held as follows:

Tuesday, November 30, 2004, 9:00 AM
 Room 301, Main Building, Herman Holloway Campus
 1901 North DuPont Highway, New Castle

Thursday, December 2, 2004, 10:00 AM
 Department of Natural Resources & Environmental
 Control Auditorium

DIVISION OF SOCIAL SERVICES PUBLIC NOTICE

Temporary Assistance for Needy Families

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

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware 19720-0906 by November 30, 2004.

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

DEPARTMENT OF INSURANCE PUBLIC NOTICE

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a **PUBLIC HEARING** will be held on Thursday, December 2, 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 1501** (formerly Regulation 41) relating to **Medicare Supplement Insurance Minimum Standards**.

The purpose for amending Regulation 1501 is to adopt the changes to the model regulation approved by the National Association of Insurance Commissioners as of September 8, 2004, changes to guaranteed insurability and miscellaneous style and semantic changes.

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., Wednesday December 1, 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.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION
PUBLIC NOTICE**

Title of the Regulation:

Regulation No. 43 – Not To Exceed Heavy Duty California Engine Standards

Brief Synopsis of the Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) allows Delaware and all states to submit to the U.S. Environmental Protection Agency (EPA) a SIP revision which adopts engine standards after, and only after, the State of California has adopted those standards. The purpose of this action is to adopt the Heavy Duty Diesel (HDD) portion of the federal Rule on 2007 and later Heavy Duty Engines in order to preserve the emission reduction benefits of that federal Rule should EPA delay, diminish or perhaps even delete their adopted Rule. This action could best be described as a “backstop” action that would only become necessary and in effect on 2007 and later model year HDDs, should EPA take any of the three options described above. This action will be an additional section to existing Regulation No. 43, which is a similar “backstop” regulation on strictly model year 2005 and 2006 HDDs. The standards

for 2007 and later HDDs is more stringent than on pre-2007 HDDs.

Notice of Public Comment:

A public hearing will be held on December 1, 2004 beginning at 6:00 PM in the Priscilla Building, 156 South State Street, Dover, Delaware.

Prepared by:

Philip Wheeler, (302) 323-4542, October 8, 2004

**DIVISION OF AIR AND WASTE MANAGEMENT
TANK MANAGEMENT BRANCH
PUBLIC NOTICE**

Title of the Regulations:

Regulations Governing Aboveground Storage Tanks

Brief Synopsis of the Subject, Substance and Issues:

Senate Substitute No. 1 for Senate Bill No. 344 amended several sections of Title 7, Chapter 74A, The Jeffrey Davis Aboveground Storage Tank Act which required subsequent changes in the Delaware Regulations Governing Aboveground Storage Tanks. Other changes were made to add clarification to the existing Regulations.

Notice of Public Comment:

A Public Hearing will be held November 22, 2004 at 6:00 p.m. at the DNREC, 391 Lukens Drive, New Castle, DE office.

Prepared by:

Jill Williams Hall , 302-395-2500, October 7, 2004

**DIVISION OF WATER RESOURCES
PUBLIC NOTICE**

Title of the Regulations:

Regulations Governing the Control of Water Pollution

Brief Synopsis of the Subject, Substance and Issues:

When the Delaware Regulations Governing Aboveground Storage Tanks became effective on June 11, 2004 an overlap between the Regulations Governing Aboveground Storage Tanks and the Regulations Governing the Control of Water Pollution was created.

The definition of “Aboveground Storage Tank” as stated in Title 7, **Del.C.** Ch. 74A and the Regulations Governing Aboveground Storage Tanks and the definition of “Bulk

storage facility” in the Delaware Regulations Governing the Control of Water Pollution encompass the same set of aboveground storage tanks. The definition of “Bulk storage facility” is being amended to remove from the Regulations Governing the Control of Water Pollution those aboveground storage tanks that are included by definition in the Regulations Governing Aboveground Storage Tanks.

Notice of Public Comment:

A Public Hearing will be held November 22, 2004 at 6:00pm at the DNREC, 391 Lukens Drive, New Castle, DE office.

Prepared by:

Jill Williams Hall, 302-395-2500, Date October 7, 2004

DIVISION OF WATER RESOURCES
PUBLIC NOTICE

Total Maximum Daily Loads (TMDLs) for Little Assawoman Bay Watershed, Delaware

Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Loads (TMDLs) Regulation for nitrogen and for phosphorous for the Little Assawoman Bay Watershed. A TMDL sets limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

Notice of Public Comment

A public hearing will be held on Tuesday, November 30, 2004, at 3:00 p.m., at Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, Delaware. The hearing record will remain open until 5:00 p.m., November 30, 2004. Please bring written comments to the hearing or send them to Lisa A. Vest, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Marianne Brady, (302)-739-4590; facsimile: (302) 739-6140; email: (marianne.brady@state.de.us) by 4:30 p.m., November 29, 2004.

Additional information and supporting technical documents may be obtained by contacting Hassan Mirsajadi, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and

Environmental Control, 820 Silver Lake Boulevard, Suite 820, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, email: (hassan.mirsajadi@state.de.us)

6.0 Prepared By:

Hassan Mirsajadi, Watershed Assessment Branch, 739-4590

DIVISION OF AIR AND WASTE MANAGEMENT
REGISTER NOTICE

Title Of The Regulations:

DELAWARE 2002 MILESTONE COMPLIANCE DEMONSTRATION FOR KENT AND NEW CASTLE COUNTIES: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone.

Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) require Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision for each of the milestone years (1996, 1999, 2002, and 2005) to demonstrate that the actual emissions of volatile organic compounds (VOC) and/or oxides of nitrogen (NOx) in Kent and New Castle Counties do not exceed the required emission targets specified in Delaware's Rate-of-Progress Plans. The document presented herein is for the milestone year of 2002, and thus termed as Delaware's 2002 Milestone Compliance Demonstration. The document analyzes VOC and NOx emission data in 2002 and concludes that Delaware's 2002 milestone for complying with the CAAA's VOC and NOx emission reduction requirements has been successfully met.

Notice Of Public Comment:

A public hearing will be held on December 1, 2004, beginning at 6:00 pm, in AQM Conference Room, Priscilla Building, 156 South State Street, Dover, DE 19901.

Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542, October 12, 2004.

DIVISION OF AIR AND WASTE MANAGEMENT
REGISTER NOTICE**Title Of The Regulations:**

AMENDMENTS TO DELAWARE PHASE II ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NON-ATTAINMENT AREA: Mid-Course Review on Progress toward Attainment of the 1-Hour Ozone National Ambient Air Quality Standard.

Brief Synopsis Of The Subject, Substance And Issues:

The Clean Air Act Amendments of 1990 (CAAA) require Delaware to submit to the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate its capability of attaining the 1-hour National Ambient Air Quality Standard (NAAQS) for the ground-level ozone in Kent and New Castle Counties by 2005. This SIP revision, termed the Phase II Attainment Demonstration, was initially submitted to the EPA in May 1998, and amended in October 1998, January 2000, December 2000, October 2001, and June 2003.

The document presented herein amends Delaware's Phase II Attainment Demonstration SIP revision again. The document analyzes emission trends of VOC and NOx and ambient air quality data regarding ground level ozone. The document concludes that (1) Delaware's current control strategies are adequate toward attaining the 1-hour ozone standard by 2005 and, (2) those control strategies have ensured a beginning of an adequate progress toward attaining of the 8-hour ozone standard.

Notice Of Public Comment:

A public hearing will be held on December 1, 2004, beginning at 6:00 p.m., in AQM Conference Room, Priscilla Building, 156 South State Street, Dover, DE 19901.

Prepared By:

Frank F. Gao, Project Leader, (302) 323-4542, October 12, 2004.

**DEPARTMENT OF SAFETY AND
HOMELAND SECURITY**
BAIL ENFORCEMENT AGENTS
PUBLIC NOTICE

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 Del.C. §5404(a) proposes to amend

Adopted Rule 1.0 - Licensing. This amendment will clarify items and fees that a Bail Enforcement Agent will receive when applying or renewing. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by November 8, 2004, to Delaware State Police, Detective Licensing, P.O. BOX 430, DOVER, DE, 19903.

ELECTRONIC RED LIGHT SAFETY PROGRAM
Public Notice Of Rescheduled Public Hearing

Notice is hereby given that the Secretary of the Department of Safety and Homeland Security, formerly the Secretary of the Department of Public Safety, in accordance with 21 Del.C. § 4101(d) and 73 Del. Laws, c. 350, sec. 92 intends to promulgate regulations.

These regulations will regulate the administration of the Electronic Red Light Safety Program in unincorporated areas of the State of Delaware. The Electronic Red Light Safety Program through the use of traffic light signal monitoring systems will impose monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals.

These regulations were published in the October issue (8 DE Reg. 524 (10/1/04)) of the *Register of Regulations*. The public hearing originally scheduled for November 1, 2004, has been rescheduled for Monday, November 22, 2004, at 1:00 P. M. in the second floor main conference room (rm. 205) of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. The Secretary of Safety and Homeland Security will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department of Safety and Homeland Security, in care of William G. Bush, IV, at P.O. Box 818, Dover, DE 19903-0818 on or before November 22, 2004. Anyone wishing to obtain a copy of the proposed regulations may do so by sending a written request to the Department of Safety and Homeland Security, P.O. Box 818, Dover, DE 19903-0818 or may obtain a copy in room 220 of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution. Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.



Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

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