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# Delaware Register of Regulations

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Issue Date: November 1, 2006

Volume 10 - Issue 5 Pages 763 - 916

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Silver Lake  
Dover, Delaware

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Proposed

Final

### Governor:

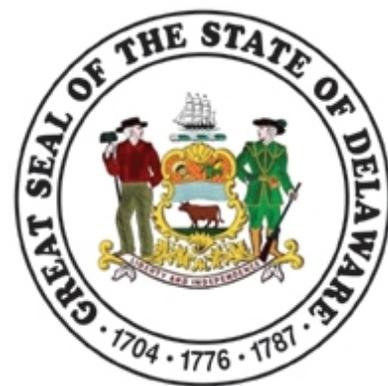
Executive Orders

Appointments

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before October 15, 2006.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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.

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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**Symbol Key**

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

**Proposed Regulations**

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

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

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 201, 205 and 210

**PUBLIC NOTICE****Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)****201 School Shared Decision Making Transition Planning Grants; 205 District Shared Decision Making Transition Planning Grants; 210 Approval of School Improvement Grants****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 201 School Shared Decision Making Transition Planning Grants, 205 District Shared Decision Making Transition Planning Grants, and 210 Approval of School Improvement Grants by combining them into a single regulation, 14 **DE Admin. Code** 202 District and School Shared Decision Making.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulations address the shared decision making processes not student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulations address the shared decision making processes not equitable education issues.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulations address the shared decision making processes not health and safety issue.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The

amended regulations address the shared decision making processes not students' legal rights.

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? Amending these regulations will not increase anyone's cost.

## ~~201 School Shared Decision Making Transition Planning Grants~~

### ~~1.0 Requests for Planning Grants~~

~~Requests for a school shared decision making transition planning grant shall be submitted via the local board of education to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Grant requests shall include the following information:~~

### ~~2.0 Report and Recommendations of the School Advisory Committee.~~

~~A copy of the *Report* must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 ~~Del.C.~~ §804. have been met.~~

~~2.1 School Advisory Committee (list names and groups represented)~~

~~2.2 Listing of the structured conversations and a brief description of the activities~~

~~2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups~~

~~2.4 Recommendation to develop a school transition plan to implement shared decision making~~

~~2.5 Process for establishing a school transition plan~~

~~2.6 Process for determining the composition and roles and responsibilities delegated to the School Transition Team~~

### ~~3.0 The School Transition Team (List Names and Groups Represented)~~

~~3.1 A description of the process for the School Transition Team to reach decisions and resolve conflicts.~~

### ~~4.0 Development of the School Improvement Plan~~

~~Assurance that the school has committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision making and improve parental involvement.~~

### ~~5.0 Description of the Plan for Communication~~

~~A description of the plan for communicating the results of the school improvement plan to the broader~~

school community for information and critical review.

## **6.0 Stakeholder Involvement**

A description of how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.

## **7.0 Stakeholders Signatures**

Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the school. Any stakeholder refusing to sign should explain why as part of the grant request.

## **8.0 Posting of the Plan**

Assurance that a copy of the *Report and Recommendations* is posted within the school for public review.

## **9.0 Signed Copy of the Report**

Assurance that each stakeholder signing the *Report and Recommendations* has received a copy of the signed report, as well as a copy of the grant request.

## **10.0 Procedure to be Used by Interested Parties to Obtain a Copy of the School Grant Request** **5-DE-Reg. 1615 (2/1/02)**

### **205-District Shared Decision-Making Transition Planning Grants**

#### **1.0 District Planning Grant Process**

Requests for a district shared decision-making transition planning grant shall be submitted to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Grant requests shall include the following information:

1.1 The Board Resolution endorsing both the concept of shared decision-making and the *Report and Recommendations* of the District Advisory Committee.

1.2 A copy of the *Report and Recommendations* of the District Advisory Committee. The *Report* must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 **Del.C.** §802 have been met.

1.2.1 District Advisory Committee (list names and groups represented)

1.2.2 Listing of the structured conversations and a brief description of the activities

1.2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups

1.2.4 Recommendation to develop a district transition plan to implement shared decision-making

1.2.5 Process for establishing a district transition plan

1.2.6 Process for determining the composition and roles and responsibilities delegated to the District Transition Team

1.3 The District Transition Team (list names and groups represented).

1.4 A description of the process for the District Transition Team to reach decisions and resolve conflicts.

1.5 A description of the plan for communicating the results of the district transition plan to the broader school community for information and critical review.

1.6 Acknowledgment that within the district transition plan there must be a policy for supporting shared decision-making activities from the local budget, including the school improvement planning process set forth in 14 **Del.C.** §806, and acknowledgment that funds must be specifically identified and made available for use by school committees.

1.7 A description of how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.

1.8 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the district. Any stakeholder refusing to sign should explain why as part of the grant request.

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- 1.9 Assurance that a copy of the Report and Recommendations is posted within the district for public review.
- 1.10 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.
- 1.11 Procedure to be used by interested parties to obtain a copy of the district grant request.

## **210 Approval of School Improvement Grants**

### **1.0 School Improvement Grant Process**

A school that has an approved shared decision making transition plan as specified in 14 ~~Del.C.~~ §806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Requests shall include the following information:

- 1.1 Evidence that the local board of education has adopted the school's transition plan; and
- 1.2 The school improvement plan containing the following components:
- 1.2.1 Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;
- 1.2.2 A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision making and support continuous improvement in teaching and student learning;
- 1.2.3 Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;
- 1.2.4 A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;
- 1.2.5 The structural changes or procedures for providing the necessary time and skill building to support shared decision making and continuous improvement in teaching and student learning;
- 1.2.6 The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;
- 1.2.7 A proposed timeline for phasing in the school improvement plan; and
- 1.2.8 A proposed budget for the use of the school improvement grant.

### **2.0 Continuing Applications**

A school with an approved application shall be eligible for a school improvement grant for the following (3) years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by 14 ~~Del.C.~~ §808 is completed and the results of such are included in the school's application.

**1-DE-Reg-1400 (3/1/98)**

**5-DE-Reg-1615 (2/1/02)**

## **202 District and School Shared Decision Making**

### **1.0 District Shared Decision Making Transition Planning Grant Process**

1.1 Requests for a district shared decision making transition planning grant shall be submitted to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Grant requests shall include the following information:

1.1.1 The local board of education Resolution endorsing both the concept of shared decision making and the Report and Recommendations of the District Advisory Committee. See 14 ~~Del.C.~~ §802(b)(c).

1.2 A copy of the Report and Recommendations of the District Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 ~~Del.C.~~ §802 have been met.

1.2.1 District Advisory Committee (list names and groups represented);

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- 1.2.2 Listing of the structured conversations and a brief description of the activities;  
1.2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups;  
1.2.4 Recommendation to develop a district transition plan to implement shared decision-making;  
1.2.5 Process for establishing a district transition plan; and  
1.2.6 Process for determining the composition and roles and responsibilities delegated to the District Transition Team.
- 1.3 The District Transition Team (list names and groups represented).  
1.4 A description of the process for the District Transition Team to reach decisions and resolve conflicts.  
1.5 A description of the plan for communicating the results of the district transition plan to the broader school community for information and critical review.  
1.6 Acknowledgment that within the district transition plan there must be a policy for supporting shared decision making activities from the local budget, including the school improvement planning process set forth in 14 Del.C. §806, and acknowledgment that funds must be specifically identified and made available for use by school committees.  
1.7 A description of how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.  
1.8 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the district. Any stakeholder refusing to sign should explain why as part of the grant request.  
1.9 Assurance that a copy of the Report and Recommendations is posted within the district for public review.  
1.10 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.  
1.11 Procedure to be used by interested parties to obtain a copy of the district grant request.

## **2.0 School Shared Decision Making Transition Planning Grant Process**

- 2.1 Requests for a school shared decision making transition planning grant shall be submitted via the local board of education to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Grant requests shall include the following information:
- 2.1.1 Report and Recommendations of the School Advisory Committee:
- 2.1.1.1 A copy of the Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 Del.C. §804 have been met.
- 2.1.1.1.1 School Advisory Committee (list names and groups represented);  
2.1.1.1.2 Listing of the structured conversations and a brief description of the activities;  
2.1.1.1.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups;  
2.1.1.1.4 Recommendation to develop a school transition plan to implement shared decision-making;  
2.1.1.1.5 Process for establishing a school transition plan; and  
2.1.1.1.6 Process for determining the composition and roles and responsibilities delegated to the School Transition Team.
- 2.2 The School Transition Team (List Names and Groups Represented)  
2.3 A description of the process for the School Transition Team to reach decisions and resolve conflicts.  
2.4 Assurance that the school has committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision-making and improve parental involvement.  
2.5 A description of the plan for communicating the results of the school improvement plan to the

broader school community for information and critical review.

2.6 A description of how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.

2.7 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the school. Any stakeholder refusing to sign should explain why as part of the grant request.

2.8 Assurance that a copy of the Report and Recommendations is posted within the school for public review.

2.9 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.

2.10 Procedure to be used by interested parties to obtain a copy of the school grant request

### **3.0 Approval of School Improvement Grants**

3.1 A school that has an approved shared decision making transition plan as specified in 14 Del.C. §806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of Education, Delaware Department of Education, 401 Federal Street, Suite 2, Dover, DE 19901-3639. Requests shall include the following information:

3.1.1 Evidence that the local board of education has adopted the school's transition plan; and

3.1.2 The school improvement plan containing the following components:

3.1.2.1 Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;

3.1.2.2 A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision making and support continuous improvement in teaching and student learning;

3.1.2.3 Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;

3.1.2.4 A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;

3.1.2.5 The structural changes or procedures for providing the necessary time and skill-building to support shared decision making and continuous improvement in teaching and student learning;

3.1.2.6 The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;

3.1.2.7 A proposed timeline for phasing in the school improvement plan; and

3.1.2.8 A proposed budget for the use of the school improvement grant.

3.2 A school with an approved application shall be eligible for a school improvement grant for the following (3) years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by 14 Del.C. §808 is completed and the results of such are included in the school's application.

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 247

### PUBLIC NOTICE

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

#### **247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars**

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

New Regulation

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

The Secretary of Education intends to adopt 14 DE Admin. Code 247 in order to define the terms and the procedures used for the operation of The Washington Center (TWC) for Internships and Academic Seminars internship program.

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

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses the procedures used for the operation of an internship programs not student achievement as measured against state achievement standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses the procedures used for the operation of an internship programs not equitable education issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses the procedures used for the operation of an internship programs not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses the procedures used for the operation of an internship programs not students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making at the universities involved in the program.

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

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 with the universities involved with the program.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The legislature required the Department of Education to make regulations concerning this program.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The state legislature will appropriate the funds needed for the internship program.

#### **247 Delaware Post Secondary Internship Program at The Washington Center (TWC) for Internships and Academic Seminars**

The Washington Center (TWC) for Internships and Academic Seminars is an independent, nonprofit

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educational organization founded in 1975. Its mission is to utilize the resources of the nation's capitol to provide participatory learning experiences in order to enhance students' academic, civic and professional development. The Washington Center (TWC) seeks to promote future leadership for public, private and nonprofit sectors of our society. The purpose of this regulation is to define the terms and the procedures used for the operation of this internship program.

## **1.0 Definitions:**

"Department" means the Delaware Department of Education

"Financial Aid Package" means the identification of all of the costs to the student to participate in the internship program and all sources of funding to meet those costs. Funding sources may include scholarships, grants, tuition waivers, loans, family contributions and contributions from the Student Intern.

"Grant" means funds that are applied against a student's cost of attending The Washington Center (TWC) for Internships and Academic Seminars program. These funds do not have to be reimbursed by the Student Intern.

"Student Intern(s)" means a matriculated student at Delaware State University or the University of Delaware who has been selected by his or her respective University to participate in The Washington Center (TWC) for Internships and Academic Seminars program and is placed in a full time internship for one semester at The Washington Center (TWC) for Internships and Academic Seminars.

"University" means the two universities participating in The Washington Center (TWC) for Internships and Academic Seminars program, Delaware State University and the University of Delaware.

## **2.0 Division of Funds**

Funds appropriated to the Department for the Washington Center (TWC) for Internships and Academic Seminars shall be divided evenly between Delaware State University and the University of Delaware for the purpose of providing Grants to Student Interns at The Washington Center (TWC) for Internships and Academic Seminars. The maximum Grant for a Student Intern shall be a one time grant of \$5,000 per student for one semester, provided further that grant amounts per student may change based on the appropriation made by the General Assembly to fund this program.

## **3.0 Each University shall be responsible for the following:**

3.1 Identifying a University liaison to The Washington Center (TWC) for Internships and Academic Seminars:

3.2 Establishing a selection process for the applicants;

3.3 Identifying all sources of financial aid for the Student Interns; and

3.4 Arranging for each Student Intern to receive between 12 and 16 credits for a successful term spent at the Washington Center (TWC) for Internships and Academic Seminars.

## **4.0 Submission of Financial Aid Packages**

Each University shall submit Financial Aid Packages for up to eight (8) applicants listed in priority order to the Department's Student Assistance Program by July 1 of each year; provided further that the number of applicants may change based on the appropriation made by the General Assembly to fund this program.

4.1 The Department's Student Assistance Program staff shall review the Financial Aid Packages and forward the approved Financial Aid Packages to the appropriate University for their selection of the four Student Interns. The number of Student Interns that may be selected to participate in this internship shall be based on 2.0 and 4.0 of this regulation.

4.2 If either University selects fewer than their allotted number of Student Interns for the program, the unused funds at that University shall be made available to the other University in order to provide for additional internships.

## **5.0 Annual Reports Required**

The Washington Center (TWC) for Internships and Academic Seminars shall provide annual reports to the Delaware Department of Education on the Student Intern program.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 371

### PUBLIC NOTICE

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

#### 371 Certification Teacher of the Hearing Impaired

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

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 371 Certification Teacher of the Hearing Impaired. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with changes in statute regarding licensure and certification of educators and to update the course requirements for the position. The regulation will be renumbered 1572 to reflect its movement to the Professional Standards Board section of the Department of Education regulations. It will be renamed Standard Certificate Teacher of the Deaf and Hard of Hearing to make it consistent with other regulations for standard certificates for educators. Working in collaboration with the former and current Directors of the Margaret S. Sterck Delaware School for the Deaf and the Licensure and Certification Criteria Committee, the new regulation was drafted and approved to be forwarded to the Professional Standards Board and the State Board of Education. This regulation sets forth the requirements for a Teacher of the Deaf and Hard of Hearing.

##### C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

## ~~371 Certification Teacher of the Hearing Impaired~~

July 1, 1993

### ~~1.0 Standard License~~

The following shall be required for the Standard License.

~~1.1 Bachelor's or Master's degree in a teacher education program in the area of Hearing Impairment (Deaf Education) or;~~

~~1.2 Bachelor's degree with a minimum of 33 credit hours in the following: Methods of Teaching Reading to the Deaf Methods of Teaching Language to the Deaf (6 semester hours) Methods of Teaching Speech to the Deaf Aural Rehabilitation Audiology Psycho, Social and Educational Aspects of Deafness Survey and Introduction, Education of Exceptional Children Human Growth and Development Manual Communications, 6 semester hours in the area of special education, or proficiency as determined by an agency authorized by the Department of Education, and an additional 6 semester hours in the area of special education Methods of Teaching Multihandicapped Deaf Children Tests and Measurements for Exceptional Children and Adults~~

### ~~2.0 Limited Standard License~~

The following shall be required for the Limited Standard License.

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district to a person who has a Bachelor's degree but is no more than 12 semester hours from completion of the requirements in 1.2.~~

### ~~3.0 Licenses that may be issued for this position include Standard and Limited Standard~~

## 1572 Standard Certificate Teacher of the Deaf and Hard of Hearing

### 1.0 Content

This regulation shall apply to the requirements for a standard certificate for Teacher of the Deaf and Hard of Hearing pursuant to 14 **Del.C.**, §1220.

### 2.0 Definitions

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

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

"**Department**" means the Delaware Department of Education.

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

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

"**Fifteen (15) Credits or Their Equivalent in Professional Development**" means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours taken either as part of a degree

program or in addition to it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

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

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

"Major or its Equivalent" means a minimum of thirty (30) semester hours of course work in a particular content area.

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

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

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

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

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

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

### **3.0 Standard Certificate**

The Department shall issue a Standard Certificate as a Teacher of the Deaf and Hard of Hearing to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

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

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

3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or

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

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

3.1.5 Holding a master's degree in deaf education from a program approved by the Council for Education of the Deaf offered through a regionally accredited college or university; or

3.1.6 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first standard certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

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

3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state as a Teacher of the Deaf and Hard of Hearing;

3.3.1 The Department shall not act on an application for certification if the applicant is under

official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution; or

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

3.5 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirements must also be met.

#### **4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

#### **5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

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

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

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

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

#### **6.0 Application Procedures for License Holders**

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

#### **7.0 Effect of Regulation**

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

#### **8.0 Validity of a Standard Certificate**

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

#### **9.0 Secretary of Education Review**

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

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 372

### PUBLIC NOTICE

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

#### 372 Certification Administrative Support Personnel (Formerly Secretarial Personnel)

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

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 372 in order to clarify the language of the regulation and to remove the requirement that support staff take the state budget and accounting course in order to receive a pay supplement. Sections 3.0 and 4.0 have been added to address the application procedures and denial of the certificate. The title has been changed to Support Personnel Salary Supplements for Additional Training and the number of the regulation has been changed from 372 to 750 placing it in the 700 section of the Administrative Code.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses salary supplements for support staff not student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses salary supplements for support staff not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses salary supplements for support staff not student health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses salary supplements for support staff not students' legal rights.

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

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14

**Del.C.** requires that we promulgate this regulation.

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

## ~~372 Certification Administrative Support Personnel (Formerly Secretarial Personnel)~~

July 1, 1993

### ~~4.0 Standard License Requirements~~

~~The following shall be required for the Standard License as referenced in Section 1309(b), Title 14, Delaware Code, and is required for additional salary as provided by that section and referred to as "Senior Secretary; Certified Secretary; and Bachelor's Degree Secretary", in both Section 1309(b) and the 1974 Specific Requirements for Certification:~~

~~1.1 Administrative Support Personnel, Level I (formerly Senior Secretary)~~

~~1.1.1 The completion of any one of the three options below will allow the individual to hold this License:~~

~~1.1.2 High school graduation or certificate of equivalency and successful completion of sixty semester hours of college level course work from a regionally accredited college program in professional office training or accounting, etc.; and demonstrated proficiency in business skills or,~~

~~1.1.3 Successful completion of all six parts of the examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI) or,~~

~~1.1.4 Successful completion of the Associate Professional Certificate Option 1 or 2, as administered by the National Association of Educational Office Professionals, Professional Standards Program (PSP).~~

~~1.2 Administrative Support Personnel, Level II (formerly Certified Secretary) The completion of Sequence 1 or 2 below will allow the individual to hold this License.~~

~~1.2.1 Sequence 1:~~

~~1.2.1.1 High School graduate or certification of equivalency and,~~

~~1.2.1.2 Associate's degree in Business, Professional Office Training or, Accounting from a regionally accredited college and,~~

~~1.2.1.3 Demonstrated proficiency in business skills and,~~

~~1.2.1.4 Completion of the Delaware approved inservice course for State Budget Accounting and,~~

~~1.2.1.5 A Minimum of five years successful experience as an office professional or,~~

~~1.2.2 Sequence 2:~~

~~1.2.2.1 High School graduate or certification of equivalency; and~~

~~1.2.2.2 Successful completion of the Associate Professional Certificate from the Professional Standards Program (PSP), options 1 or 2, as administered by the National Association of Educational Office Professionals or, successful completion of all six parts of the examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI) and,~~

~~1.2.2.3 Twelve additional semester hours which shall include business theory courses, business computer applications and,~~

~~1.2.2.4 Completion of the Delaware approved inservice course for State Budget Accounting and,~~

~~1.2.2.5 A minimum of five years of successful experience as an office professional.~~

~~1.3 Administrative Support Personnel, Bachelor's Degree (formerly Bachelor's Degree Secretary)~~

~~1.3.1 Bachelor's degree from a regionally accredited College and,~~

~~1.3.2 Demonstrated proficiency in business skills and,~~

~~1.3.3 Completion of the Delaware approved inservice course for State Budget Accounting.~~

### ~~2.0 The license that may be issued for this position is the Standard License~~

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## 750 Support Personnel Salary Supplements for Additional Training

### **1.0 Definitions:**

"Certificate" means a document issued by the Department of Education that verifies completion of the additional training required for a Level I, Level II or Bachelor's degree status for support personnel.

"Department" means the Delaware Department of Education.

"Secretary" means the Secretary of the Delaware Department of Education.

"Support Personnel" means an administrative secretary, financial secretary, senior secretary, secretary or clerk employed by a school district, charter school or by the Department of Education.

### **2.0 Supplements for Additional Training**

An administrative secretary, financial secretary, senior secretary, secretary or clerk shall receive as salary the amount that the employee qualifies for under 14 **Del.C.** §1308 plus an annual amount for additional training as defined in 14 **Del.C.** §1309(b). The following shall be the requirements for the salary supplements defined in 14 **Del.C.** §1309(b):

2.1 Professional Secretary Certificate, Level I Salary Supplement Qualifications

2.1.1 Hold a high school diploma or certificate of equivalency; and

2.1.1.1 Complete sixty (60) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related areas; or

2.1.1.2 Pass all six parts of the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI); or

2.1.1.3 Pass the National Association of Educational Office Professionals, Professional Standards Program (PSP), Certificate Level, Option 1 or Option II.

2.2 Certified Secretary Certificate, Level II Salary Supplement Qualifications

2.2.1 Hold a high school diploma or certificate of equivalency; and

2.2.1.1 Complete an associate degree in business, professional office training or accounting from a regionally accredited post secondary institution and have a minimum of five years successful experience as an office professional; or

2.2.1.2 Pass all six parts of the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI), complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area and have a minimum of five years successful experience as an office professional; or

2.2.1.3 Pass the Associate Professional Certificate from the Professional Standards Program (PSP), Options I or II, as administered by the National Association of Educational Office Professionals, complete twelve (12) semester hours of course work from a regionally accredited post secondary institution in professional office training, accounting or other related area and have a minimum of five years successful experience as an office professional.

2.3 Bachelor's Degree Certificate, Level III Salary Supplement Qualifications

2.3.1 An individual shall hold a Bachelor's degree from a regionally accredited College.

### **3.0 Requirements for a Certificate**

The Department shall issue Certificates to Support Personnel in local school districts, charter schools and in the Department of Education who have met the requirements for additional training in 2.1, 2.2 or 2.3.

### **4.0 Application Procedures**

4.1 Applicants for a Certificate for additional training shall submit to the Department the appropriate evidence required to meet the requirements for the type of Certificate requested in 2.1, 2.2 and 2.3 as described in 4.1.1 through 4.1.3.

4.1.1 Official transcripts forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

4.1.2 Evidence of passing scores on the Examination for Certified Professional Secretaries administered by the Professional Secretaries International (PSI) or passing scores on the Associate Professional Certificate from the Professional Standards Program (PSP), Options 1 or 2, as administered by the National Association of Educational Office Professionals.

## 4.1.3 Documentation of years of experience if appropriate.

### **5.0 Denial of Certificate**

An applicant may be denied a Certificate for an additional training supplement upon a finding that the applicant has failed to meet the requirements set forth herein or is found to have made a materially false or misleading statement on his or her application or supporting materials.

5.1 The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary or his or her designee within 10 days of the receipt of the notice of denial. The Secretary's decision shall be final.

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220  
(14 Del.C. §1220)  
14 DE Admin. Code 1561

### PUBLIC NOTICE

#### 1561 Standard Certificate Teacher Exceptional Children Special Education Elementary

#### A. Type of Regulatory Action Requested

Repeal

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** 1561. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). The content of the regulation has been subsumed into amended regulation 1562 Standard Certificate Exceptional Children Special Education Teacher K to 12. The PRAXIS™ II test in this content area is comprehensive in nature, addressing grades kindergarten through 12.

#### ~~1561 Standard Certificate Teacher Exceptional Children Special Education Elementary~~

#### ~~1.0 Content~~

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher Exceptional Children Special Education Elementary (Grades 1 to 8).~~

~~7-DE-Reg- 775 (12/1/03)~~

#### ~~2.0 Definitions~~

~~2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~"Department" means the Delaware Department of Education.~~

~~"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

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

~~7-DE-Reg- 775 (12/1/03)~~

#### ~~3.0 Standard Certificate~~

In accordance with ~~14 Del.C. §1220(a)~~, the Department shall issue a Standard Certificate as a Teacher Exceptional Children Special Education Elementary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

~~3.1 A Bachelor's degree from a regionally accredited college or university and,~~

~~3.2 Professional Education~~

~~3.2.1 Completion of a teacher education program in the area of Standard Certificate sought or,~~

~~3.2.2 A minimum of 42 semester hours as follows:~~

~~3.2.2.1 Twenty four semester hours required core courses for all Exceptional Teaching~~

Licenses

~~3.2.2.1.1 Methods in Elementary Reading~~

~~3.2.2.1.2 Methods in Elementary Mathematics~~

~~3.2.2.1.3 Classroom Management~~

~~3.2.2.1.4 Introduction to Education of Exceptional Children~~

~~3.2.2.1.5 Child Growth and Development~~

~~3.2.2.1.6 Applied Behavior Analysis~~

~~3.2.2.1.7 Student Teaching with Exceptional Children Grades 1 to 8 (6~~

~~semester hours) and,~~

~~3.2.2.2 Eighteen semester hours for Mildly and Moderately Disabled and Physically~~

~~Impaired (PI):~~

~~3.2.2.2.1 Language Development~~

~~3.2.2.2.2 Methods and Curriculum in area(s) of endorsement (elementary~~

~~based)~~

~~3.2.2.2.3 Diagnosis, Assessment and IEP Development for~~

~~Exceptionalities~~

~~3.2.2.2.4 Assistive Technology (Mildly and Moderately Disabled) Assistive~~

~~Technology for Physically Impaired (PI)~~

~~3.2.2.2.5 Diagnosis and Correction of Reading Disabilities~~

~~3.2.2.2.6 One three semester hour elective from the following:~~

~~Consultation, Social Skills Training, Counseling Techniques, Research Theories of Exceptional Children, Current Issues in Special Education and Multicultural Issues Education.~~

~~3.2.2.3 Eighteen semester hours for Visually Impaired~~

~~3.2.2.3.1 Anatomy and Physiology of the Eye~~

~~3.2.2.3.2 Braille and Nemeth Code (preferably including instruction in~~

~~Braille)~~

~~3.2.2.3.3 Orientation and Mobility for the Teacher of the Visually Impaired~~

~~3.2.2.3.4 Education for the Visually Impaired (Adapting Materials and~~

~~Methods)~~

~~3.2.2.3.5 Assistive Technology~~

~~3.2.2.3.6 Diagnosis, Assessment and IEP Development~~

~~7-DE Reg. 775 (12/1/03)~~

#### ~~4.0 Effective Date~~

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Teacher Exceptional Children Special Education Elementary after that date must comply with the requirements set forth in 14 Del.C. §1516.~~

~~7-DE Reg. 775 (12/1/03)~~

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# PROPOSED REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1562

### PUBLIC NOTICE

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

#### 1562 Standard Certificate Teacher Exceptional Children Special Education Secondary

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1562 Standard Certificate Teacher Exceptional Children Special Education Secondary. It will be renamed 1562 Standard Certificate Exceptional Children Special Education Teacher K to 12. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute. The passage of PRAXIS™ II, a test of content knowledge, is now required, where applicable and available, in addition to academic preparation, for the issuance of a Standard Certificate. The grade configuration of the certificate is being changed from 7 to 12 to K to 12 to align it with the required PRAXIS™ II test. Working in collaboration with the Department of Education staff and the Licensure and Certification Criteria Committee, the new regulation was drafted and approved to be forwarded to the Professional Standards Board and the State Board of Education. This regulation sets forth the requirements for an Exceptional Children Special Education Teacher K to 12.

#### C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

### **1562 Standard Certificate ~~Teacher~~ Exceptional Children Special Education ~~Secondary~~ Teacher K to 12**

#### **1.0 Content**

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for ~~Teacher~~ Exceptional Children Special Education Secondary ~~(Grades 7 to 12)~~ Teacher K to 12.

#### **2.0 Definitions**

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

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

**"Department"** means the Delaware Department of Education.

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

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

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

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

**"License"** means a credential which authorizes the holder to engage in the practice for which the license is used.

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

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

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

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

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

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

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

# PROPOSED REGULATIONS

## ~~3.0 Standard Certificate~~

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Teacher Exceptional Children Special Education Secondary to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 A Bachelor's degree from a regionally accredited college or university and,~~

~~3.2 Professional Education~~

~~3.2.1 Completion of a teacher education program in the area of the standard certificate sought~~

~~or,~~

~~3.2.2 A minimum of 42 semester hours as follows:~~

~~3.2.2.1 Twenty four semester hours required core courses for all Exceptional Teaching~~

~~Licenses~~

~~3.2.2.1.1 Methods in Reading~~

~~3.2.2.1.2 Methods in Mathematics~~

~~3.2.2.1.3 Classroom Management~~

~~3.2.2.1.4 Introduction to Education of Exceptional Children~~

~~3.2.2.1.5 Adolescent Psychology and Development~~

~~3.2.2.1.6 Applied Behavior Analysis~~

~~3.2.2.2 Eighteen semester hours for Mildly and Moderately Disabled and Physically~~

~~Impaired (PI):~~

~~3.2.2.2.1 Issues in Secondary Transition and Vocational Education~~

~~3.2.2.2.2 Methods and Curriculum in area(s) of endorsement (secondary~~

~~based)~~

~~3.2.2.2.3 Diagnosis, Assessment, and IEP Development for~~

~~Exceptionalities~~

~~3.2.2.2.4 Assistive Technology (Mildly and Moderately Disabled) Assistive~~

~~Technology for Physically Impaired (PI)~~

~~3.2.2.2.5 Six semester hours from the following: Consultation, Social Skills~~

~~Training, Diagnosis and Correction of Reading Disabilities, Counseling Techniques, Research and Theories of Exceptional Children, Current Issues in Special Education and Multicultural Issues in Education.~~

~~3.2.2.3 Eighteen semester hours for Visually Impaired~~

~~3.2.2.3.1 Anatomy and Physiology of the Eye~~

~~3.2.2.3.2 Braille and Nemeth Code (preferably including instruction in~~

~~Braille)~~

~~3.2.2.3.3 Orientation and Mobility for the Teacher of the Visually Impaired~~

~~3.2.2.3.4 Education for the Visually Impaired (Adapting Materials/Methods)~~

~~3.2.2.3.5 Assistive Technology~~

~~3.2.2.3.6 Diagnosis, Assessment, and IEP Development~~

## 3.0 Standard Certificate

The Department shall issue a Standard Certificate as Exceptional Children Special Education Teacher K to 12 to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

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

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

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

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator

preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department, and

3.1.4.1 A minimum of twenty-one (21) graduate or undergraduate credits in special education from a regionally accredited college or university, as more specifically set forth in 3.1.4.1.1 through 3.1.4.1.7. With approval of a Committee comprised of the candidate's principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.

3.1.4.1.1 Behavioral Assessment and Management;  
3.1.4.1.2 Diagnosis and Correction of Reading Disabilities;  
3.1.4.1.3 Assistive Technology;  
3.1.4.1.4 Diagnosis/Assessment/IEP Development;  
3.1.4.1.5 Issues in Secondary Transition and Career and Technical

Education;

3.1.4.1.6 Consultation Techniques and Collaboration Strategies, or Families and Developmental Disabilities;

3.1.4.1.7 Instructional Methods in Elementary/Middle School Special Education, or Instructional Methods in Secondary Special Education; and

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

3.3 Met the requirements for licensure and holding a valid and current license or certificate from another state in Teacher Exceptional Children Special Education;

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

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

#### **4.0 Effective Date**

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a teacher exceptional children special education secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

~~7-DE-Reg-775 (12/1/03)~~

#### **4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

#### **5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

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

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

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

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

# PROPOSED REGULATIONS

## **6.0 Application Procedures for License Holders**

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

## **7.0 Effect of Regulation**

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

## **8.0 Validity of a Standard Certificate**

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

## **9.0 Secretary of Education Review**

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

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## **DEPARTMENT OF FINANCE DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

### **PUBLIC NOTICE**

#### **301 Publication of Tax Information**

**SUBJECT:** "PUBLICATION OF TAX INFORMATION"  
30 Del.C. § 359(b). A NEW ENACTMENT OF THE 143<sup>RD</sup> GENERAL ASSEMBLY

**DATED:** October 5, 2006

**AUTHORITY:**

This regulation is promulgated pursuant to the authority given the Secretary of Finance, State of Delaware (the Department) in section 354 of Title 30 of the **Delaware Code** as well as section (8) of the new act.

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is

contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word “taxpayer” appearing in the first line of section (b)(2) and in section (b)(4) means only “the entities other than natural persons” referred to in last part of section (b)(2) or whether the word “taxpayer” as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

## REGULATION:

The Department interprets the word “taxpayer” appearing in sections (b)(2) and (4) to include within its scope those individual 25% owners, beneficial owners and responsible officers of entities other than natural persons. Therefore, before one of their names can be published the liability against the individual owner, beneficial owner or responsible officer must be reduced to judgment.

## DISCUSSION:

The general intent of the act taken as a whole is to coerce the payment of existing tax liabilities. The specific command of subsection (b)(4) and the plain meaning of the words therein is that before a taxpayer’s name can be published the liability must be reduced to judgment. This requirement we understand to be a precaution to insure that the taxpayer is aware of his personal responsibility for a liability that has become fixed, liquidated and final. Section (b)(4) goes on to require notice of the judgment be given to the taxpayer and in the section’s own words to the same class of persons who can be named under (b)(2) to wit: owners, beneficial owners, and responsible officers. As the two sections use identical words we are compelled to conclude that the General Assembly intended them to mean the same thing and to require the same safe guards be complied with before the name of an entity’s owner, beneficial owner or responsible officer is published in the coercive manner contemplated.

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at [c.yegla@state.de.us](mailto:c.yegla@state.de.us) or by phone to (302) 577-8680. The deadline for receipt of public comments is November 30, 2006.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Long Term Care Medicaid – Retirement Funds

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by November 30, 2006.

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

**SUMMARY OF PROPOSED CHANGE****Statutory Authority**

20 CFR §416.1202, *Deeming of Resources*

**Summary of Proposed Change**

The purpose of this amendment is to provide guidance on when and how to count pension plans such as IRAs for the purposes of determining eligibility for Long Term Care Medicaid. This guidance is based on (1) Social Security Policy Brief No. 2006-01, dated March 2006 and, (2) POMS SI 01330.120.

Key points of amended DSSM 20330.4 include:

- Defined Contribution Plans will be counted as a resource in the eligibility process.
- Defined Benefit Plans will be excluded as a resource until the recipient achieves a certain pre-determined age. At that point, the funds become a countable resource.
- Neither Defined Contribution nor Defined Benefit Plans owned by an ineligible spouse are a countable resource.

**(Break in Continuity of Sections)****20330 Countable Resources Computation****20330.1 Vehicles**

Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 20310.5. Only one vehicle may be excluded for a married couple.

If NO vehicle is excluded per Section 20310.5, up to \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per Section 20310.5.

Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.

**20330.2 Financial Institutions Accounts**

Financial institution accounts which include savings accounts, checking accounts, certificates of deposit, etc., are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the account is titled.

If an individual is designated as sole owner by the account title, all of the funds are that individual's resource unless legal restrictions preclude the owner from using the funds for his or her support and maintenance. We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100% ownership.

If the account is in the name of a Medicaid applicant/recipient and another Medicaid applicant/recipient, assume all account funds belong to each individual in equal shares. If the account is in the name of a Medicaid applicant/recipient and another individual who is not applying for Medicaid or who is not a Medicaid recipient, then assume all of the funds belong to the Medicaid applicant/recipient.

If the applicant or recipient disagrees with the ownership presumption on jointly-held accounts, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Obtain the individual's statement on a form containing the penalty clause regarding who owns the funds, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent.

Inform the individual that he or she must submit the following evidence within 30 days:

- a corroborating statement from the other account holder(s). If the other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account; account records showing deposits, withdrawals and interest paid for the months that ownership is an issue; if the individual owns none of the funds, evidence showing that he or she can no longer withdraw funds from the account; if the individual owns only a portion of the funds, evidence showing removal from the account of the individual's funds or removal of the funds owned by the other account holder(s) and redesignation of the account.

Any funds that the evidence establishes were owned by the other account holder(s) are not and were not the individual's resources. The effect of a successful rebuttal is retroactive as well as prospective.

### **20330.3 Promissory Notes, Loans and Property Agreements**

A loan is an advance from a lender to a borrower that the borrower must repay, with or without interest. Loan proceeds are not income to the borrower because of the borrower's obligation to repay. Any portion of the borrowed funds that the borrower does not spend is a countable resource if retained into the month following the month of receipt.

If the Medicaid applicant is the owner of a promissory note, loan, or property agreement (mortgage), assume the value of the agreement is its outstanding principal balance unless the individual furnishes reliable evidence that it has a current market value of less than that or no current market value at all. If the note, loan or mortgage is not salable, it has no current market value.

If the outstanding principal balance plus other countable resources exceeds the resource limit, inform the individual that DSS/Medicaid will use the outstanding principal balance in determining resources unless the individual submits within 30 days the following information.

- a. evidence of a legal bar to the sale of the agreement
- b. an estimate from a knowledgeable source (financial institution, bank, real estate broker)

showing the current market value of the agreement is less than its outstanding principal balance. The estimate must show the name, title and address of the source.

Payments received against the principal balance are not income. They are conversion of a resource. The portion of the payment which represents interest is unearned income.

### **20330.4 Retirement Funds**

Retirement funds are annuities or work-related plans for providing income when employment ends, such as pensions, individual retirement accounts (IRA), disability, Keogh plans and some profit sharing plans.

The value of a retirement fund is the amount of money that an individual can currently withdraw. Pension plans that allow withdraws are known as Defined Contribution Plans. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty deduction. Any taxes due are not deductible in determining the fund's value. A retirement fund is not a resource if an individual must terminate employment in order to obtain any payment.

If an individual is eligible for periodic retirement benefits, the individual must apply and accept the periodic benefit. If the individual has a choice between periodic benefits and a lump sum, the individual must choose the periodic benefits.

Defined Benefit Plans are retirement funds that are not accessible until the recipient becomes a certain age. these plans are not considered a countable resource until the individual reaches a pre-determined age. Defined Contribution Plans and Defined Benefit Plans are not considered countable resources when owned by an ineligible spouse.

**\*Please Note: As the rest of the sections were not amended, they are not being published. For more information, please contact the Division of Medicaid and Medical Assistance. A complete set of the DSSM regulations is available at:**

**<http://www.state.de.us/research/AdminCode/title16/5000/5100/Table%20of%20Contents.shtml>**

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# PROPOSED REGULATIONS

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Long Term Care Medicaid - Annuities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) to comply with the treatment of annuities provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by November 30, 2006.

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

#### SUMMARY OF PROPOSED AMENDMENT

##### Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

##### Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(B)(i) of Social Security Act affecting Long Term Care services and supports.

##### Summary of Proposals

The DRA contains a number of provisions necessitating changes to Delaware rules. This regulatory action incorporates the mandatory provisions as it relates to *Disclosure and Treatment of Annuities and State Named as Remainder Beneficiary*.

*DSSM 20330.4.1 is revised and updated as follows:*

Disclosure and Treatment of Annuities

Current law provides that the term "trust," for purposes of asset transfers and the look-back period, includes annuities only to the extent that the HHS Secretary defines them as such. CMS guidance (Transmittal Letter 64) asks states to determine the ultimate purpose of an annuity in order to distinguish those that are validly purchased as part of a retirement plan from those that abusively shelter assets.

Section 6012 of the DRA requires individuals, upon Medicaid application for long term care services and redetermination of eligibility, to disclose to the state, a description of any interest the individual or community spouse has in an annuity (or similar financial instrument), and regardless of whether the annuity is irrevocable or is treated as an asset.

*Disclosure and Treatment of Annuities on or after February 8, 2006*

For the purposes of being eligible for long term care services under Medicaid, the applicant or the applicant's spouse must disclose any interest in an annuity (or similar financial instrument). Section 6012 of the DRA:

- Mandates the disclosure and treatment of annuities.
- Mandates that the purchase of an annuity be treated as a transfer of assets for less than fair

- market value unless the State is named as the remainder beneficiary.
- Mandates that an annuity shall be treated as a transfer of assets for less than fair market value unless the annuity is irrevocable, non-assignable, actuarially sound, and provide for equal payments.

#### *State Named as the Remainder Beneficiary*

Current law only requires the State be named a remainder beneficiary when the annuitant is the client, not the community spouse.

Section 6012(b) of the DRA changes this to include annuities purchased for or by a person who is the community spouse on or after February 8, 2006.

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

### **20330 Countable Resources Computation**

#### **20330.1 Vehicles**

Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 20310.5 . Only one vehicle may be excluded for a married couple.

If NO vehicle is excluded per Section 20310.5, up to \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per Section 20310.5 .

Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to obtain medical treatment.

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If an individual is designated as sole owner by the account title, all of the funds are that individual's resource unless legal restrictions preclude the owner from using the funds for his or her support and maintenance. We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100% ownership.

If the account is in the name of a Medicaid applicant/recipient and another Medicaid applicant/recipient, assume all account funds belong to each individual in equal shares. If the account is in the name of a Medicaid applicant/recipient and another individual who is not applying for Medicaid or who is not a Medicaid recipient, then assume all of the funds belong to the Medicaid applicant/recipient.

If the applicant or recipient disagrees with the ownership presumption on jointly-held accounts, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Obtain the individual's statement on a form containing the penalty clause regarding who owns the funds, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent. Inform the individual that he or she must submit the following evidence within 30 days:

- a corroborating statement from the other account holder(s). If the other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account; account records showing deposits,

withdrawals and interest paid for the months that ownership is an issue; if the individual owns none of the funds, evidence showing that he or she can no longer withdraw funds from the account; if the individual owns only a portion of the funds, evidence showing removal from the account of the individual's funds or removal of the funds owned by the other account holder(s) and redesignation of the account.

Any funds that the evidence establishes were owned by the other account holder(s) are not and were not the individual's resources. The effect of a successful rebuttal is retroactive as well as prospective.

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If the Medicaid applicant is the owner of a promissory note, loan, or property agreement (mortgage), assume the value of the agreement is its outstanding principal balance unless the individual furnishes reliable evidence that it has a current market value of less than that or no current market value at all. If the note, loan or mortgage is not salable, it has no current market value.

If the outstanding principal balance plus other countable resources exceeds the resource limit, inform the individual that DSS/Medicaid will use the outstanding principal balance in determining resources unless the individual submits within 30 days the following information.

- a. evidence of a legal bar to the sale of the agreement
- b. an estimate from a knowledgeable source (financial institution, bank, real estate broker)

showing the current market value of the agreement is less than its outstanding principal balance. The estimate must show the name, title and address of the source.

Payments received against the principal balance are not income. They are conversion of a resource. The portion of the payment which represents interest is unearned income.

### **20330.4 Retirement Funds**

Retirement funds are annuities or work-related plans for providing income when employment ends, such as pensions, individual retirement accounts (IRA), disability, Keogh plans and some profit sharing plans.

The value of a retirement fund is the amount of money that an individual can currently withdraw. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty deduction. Any taxes due are not deductible in determining the fund's value. A retirement fund is not a resource if an individual must terminate employment in order to obtain any payment.

If an individual is eligible for periodic retirement benefits, the individual must apply and accept the periodic benefit. If the individual has a choice between periodic benefits and a lump sum, the individual must choose the periodic benefits.

#### **20330.4.1 Annuities**

An annuity is a financial device between an individual and a commercial company that conveys a right to receive periodic payments for life or a fixed number of months or years.

##### **20330.1.1.A**

###### **A. Treatment of annuities purchased prior to February 8, 2006:**

While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable asset. The applicant must demonstrate to DSS DMMA that will determine if there is a market to purchase the annuity stream of income does not exist. ~~If there is a market exists, DSS DMMA will consider the annuity to be an it to be available resource, for the applicant's or spouse's support and maintenance.~~ See 20 CFR 416.1201 (a).

To calculate the value of the annuity's stream of income, DSS DMMA will use the amount at which the annuity was originally purchased and subtract all payments received to date. The remainder is the value of the annuity's income stream. DSS DMMA will require the annuity income stream be sold at Fair Market Value as a condition of eligibility. See DSSM 20350.1.7.

DSS DMMA will not count the value of an annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant. However, DSS DMMA will count the value of the income generated from a third party annuity.

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests **MUST** go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r-5(e). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

**8 DE Reg. 1617 (5/01/05)**

## **20330.4.1.B**

### **B. Treatment of Annuities purchased on or After February 8, 2006:**

An applicant or his/her representative shall disclose to DMMA any interest in any revocable or irrevocable annuity that the Medicaid applicant or his/her spouse has in an annuity or similar financial instrument. Failure to report an annuity to DMMA may result in possible civil and criminal charges, and potential recovery of benefits that were incorrectly paid. The total purchase price of the annuity minus any income received to date will be counted as a resource.

### **20330.4.1.B.1**

As a condition of eligibility, the State of Delaware must be named as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant. Unless there is a community spouse, minor child or disabled child who resides in the applicant's home. In such a case, the State must be named as a beneficiary in the correct position or the purchase of the annuity shall be considered a transfer for less than fair market value.

### **20330.4.1.B.2**

The State of Delaware shall notify the issuer of the annuity of its interest and beneficiary status. This notice shall require the issuer to notify the State of any changes in the amount of income, principal or beneficiary to the annuity. Any transactions that occur on or after 2/8/06, subject the annuity to Deficit Reduction Act rules, even if the annuity was originally purchased prior to 2/8/06. Transactions may include such things as addition of principal, elective withdrawals, requests to change the beneficiary, and elections to annuitize the contract. The applicant/recipient may be held liable for the issuer's failure to respond to the agency's request for information. Should the issuer not respond to agency requests in a timely manner, it will be assumed that a transfer of assets has occurred and the applicant/recipient's Medicaid benefits may be denied and or terminated.

### **20330.4.1.B.3**

Annuities purchased where the community spouse is the annuitant will be considered as part of the community spouse resource and /or income allocation. Any annuities which bring the community spouse's total income allowance over the maximum monthly needs allowance will be counted in the resource calculation. The total purchase price of the annuity shall be the value counted in the spousal resource calculation.

### **20330.4.1.B.4**

The purchase of an annuity shall be treated as a transfer of assets without fair consideration unless:

1. The annuity is
  - a. irrevocable and nonassignable; and
  - b. is actuarially sound according to the life expectancy table developed by the Social Security Administration at <http://www.ssa.gov/OACT/STATS/table4c6.html>
  - c. Provides for payments in equal amounts during the term of the annuity with no deferral or balloon payments; and
2. The State of Delaware, Department of Health and Social Services, Division of Medicaid and Medical Assistance, is named as the remainder beneficiary in the first position for the total amount of

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medical assistance paid on behalf of the individual; or

3. The State of Delaware, Department of Health and Social Services, Division of Medicaid and Medical Assistance, is named as the remainder beneficiary after the community spouse or minor or disabled child as defined in 1917(c)(2)(A)(ii) and who is named in the first position; or

4. The annuity is an Individual Retirement Annuity (IRA) as described in Section 408(b) of the Internal Revenue Code of 1986; or

5. The annuity is part of a deemed IRA under a qualified employer plan as described in Section 408(g) of the Internal Revenue Code of 1986; or

6. The annuity was purchased with proceeds from:

a. An IRA account as described in Section 408(a), 408(c), 408(p), 408(k) or 408A of the Revenue Code of 1986.

**\*Please Note:** As the rest of the sections were not amended, they are not being published. For more information, please contact the Division of Medicaid and Medical Assistance. A complete set of the DSSM regulations is available at:

<http://www.state.de.us/research/AdminCode/title16/5000/5100/Table%20of%20Contents.shtml>

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 Del.C. §§314 & 3403)  
18 DE Admin. Code 1501

### PUBLIC NOTICE

#### 1501 Medicare Supplement Insurance Minimum Standards

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of a proposed change to Department of Insurance Regulation 1501 relating to producer continuing education. The Commissioner proposes to amend **Regulation 1501** relating to **MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS**. The docket number for this proposed amendment is 291.

The proposed change to the regulation appears only in section 17.4.4 of the regulation and is intended to correct the inadvertent omission of certain language designed to clearly indicate that any insurer offering Medicare Supplement Insurance in the State of Delaware is required to offer Plans A, B, C and F to all eligible consumers. This amendment corrects that omission and is the only proposed change to the regulation.

The proposed amendment can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Wednesday, December 3, 2006, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

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

#### 17.0 Required Disclosure Provisions

##### 17.1 General Rules.

17.1.1 Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

17.1.2 Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of the policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

17.1.3 Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

17.1.4 If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

17.1.5 Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

17.1.6 Buyer's Guide

17.1.6.1 Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person(s) eligible for Medicare shall provide to those applicants a "Guide to Health Insurance for People with Medicare" in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services (CMS) and in a type size no smaller than 12 point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

17.1.6.2 For purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

17.2 Notice Requirements.

17.2.1 As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the Commissioner. The notice shall:

17.2.1.1 Include a description of revisions to the Medicare Program Ad a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

17.2.1.2 Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

17.2.2 The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

17.2.3 Such notices shall not contain or be accompanied by any solicitation.

17.3 MMA Notice Requirements.

Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

17.4 Outline of Coverage Requirements for Medicare Supplement Policies.

17.4.1 Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and

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17.4.2 If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

“NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued.”

17.4.3 The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A through L shall be shown on the cover page, and the plan(s) that are offered by this issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

17.4.4 Every issuer or company must make Plans A, B, and F available to all eligible persons. The following items shall be included in the outline of coverage in the order prescribed below.

[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page: 1 of 2 (USE DOUBLE-SIDED FORM)  
Benefit Plans \_\_\_\_\_[insert letters of plans being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans. These charts shows the benefits included in each of the standard Medicare supplement plans. Every company must make available Plans "A, B, C and F." Some plans may not be available in your state.

**\*Please Note: As the rest of the sections were not amended, they are not being published. For more information, please contact the Department of Insurance. A complete set of the rules and regulations for the Department of Insurance is available at: <http://www.state.de.us/research/AdminCode/title18/index.shtml>**

## DEPARTMENT OF JUSTICE

### FRAUD AND CONSUMER PROTECTION DIVISION

Statutory Authority: 6 Delaware Code, Section 2432A(h) (6 Del.C., §2432A(h))

#### PUBLIC NOTICE

#### Debt Management Services

The Attorney General in accordance with 6 Del.C. §2432(h) has proposed to adopt rules and regulations to implement the Delaware Uniform Debt Management Act in 6 Del.C. Chapter 24A.

A public hearing will be held at 10:00 a.m. on December 11, 2006 in the Attorney General's conference on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, 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 Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

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## Proposed Rules and Regulations Debt Management Services

### 1.0 Definitions

1.1 The following terms are defined in 6 Del.C. §2402A and have the same meaning when used in these rules.

"affiliate"

"agreement"

"bank"

"business address"

"certified counselor"

"Attorney General"

"Concessions"

"Day"

"Debt-management services"

"Entity"

"Good faith"

"Person"

"Plan"

"Principal amount of debt"

"Provider"

"Record"

"Settlement fee"

"Sign"

"Trust account"

1.2 The following terms used herein mean:

1.2.1 "Accreditation" means certified as meeting a prescribed standard.

1.2.2 "Administrative Procedures Act" or "APA" means 29 Del.C. Chapter 101.

1.2.3 "Consumer Protection Unit" or "Consumer Protection Division" means the section of the Department of Justice established under 29 Del.C. §2517.

1.2.4 "Debt Management Services" as defined in 6 Del.C. §2402(9) include, but are not limited to, debt negotiation and settlement.

1.2.5 "Delaware Uniform Debt Management Act" or "Act" means the provisions in Chapter 24A of Title 6 of the Delaware Code.

1.2.6 "Director" means the Deputy Attorney General assigned as head of the Consumer Protection Unit.

1.2.7 "Hearing Officer" means an attorney assigned to conduct an administrative hearing.

### 2.0 Applicability

2.1 A provider of debt management services is not required to be licensed under the Delaware Uniform Debt Management Services Act if the provider:

2.1.1 has no reason to know the individual receiving services by agreement resides in Delaware; or

2.1.2 receives no compensation from the individual receiving services or a creditor of that individual.

2.2 Debt management services do not include:

2.2.1 legal services provided by an attorney authorized to practice law in Delaware and in an attorney-client relationship or

2.2.2 accounting services provided by a certified public accountant licensed to provide accounting services in Delaware and in an accountant-client relationship.

2.2.3 services provided within the scope of the business or profession by

2.2.3.1 a judicial officer; or person acting under court or administrative order;

2.2.3.2 an assignee for the benefit of creditors;

2.2.3.3 a bank or government regulated bank affiliate;

2.2.3.4 a title insurer, an escrow company, or a person providing bill paying services if

# PROPOSED REGULATIONS

the provision of debt-management services is incidental to the bill-paying services.

## **3.0 Administration**

3.1 The Consumer Protection Unit of the Fraud and Consumer Protection Division is designated by the Attorney General to administer the Delaware Uniform Debt-Management Services Act in Chapter 24A of Title 6 of the Delaware Code.

3.1.1 The address of the Consumer Protection Unit is 820 N. French St., Fifth Floor, Wilmington, DE 19801. The phone number is (302) 577-8600 or (800) 220-5454 (in Delaware).

3.1.2 The address for the Attorney General on the internet is <http://www.state.de.us/attgen>

3.1.3 Business hours are 8:30 to 5:00 p.m. Mondays through Fridays excluding legal State holidays as defined in 1 Del.C. §501.

3.2 Copies of the law and rules are available by contacting the office above or from the web site.

3.3 Applicants are required to read and comply with the law and the rules. The rules are intended to be explanatory and do not contain all of the details found in the law.

## **4.0 Applications**

4.1 Applications for licensure shall be submitted on forms approved by the Director of the Consumer Protection Unit. Application forms will be mailed to an applicant upon request and are also available in person or through the web site at the addresses provided in Rule 3.1.

4.2 Applications must be complete before they are submitted for consideration. Incomplete applications may be denied or returned to the applicant. Applications shall include:

4.2.1 An audited review by a certified accountant of the applicant's financial statements for the two years preceding the application or the period of existence, whichever is less. 6 Del.C. §2406A (8).

4.2.2 At the applicant's expense, the results of a criminal history record check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. §534) and 28 C.F.R. §50.12., conducted within the last 12 months for every officer of the applicant and every employee with access to the trust account.

4.2.2.1 The applicant may request sufficient fingerprint cards and authorization forms from the Consumer Protection Unit of the Delaware Attorney General's Office for the individuals needing criminal records checks. The cards can then be taken to a local law enforcement agency for fingerprinting. The completed cards and authorizations shall be returned to the Consumer Protection Unit for further processing by the Delaware Bureau of Identification.

4.2.2.2 The Delaware Bureau of Identification shall be the intermediary and the Office of the Attorney General of Delaware - Consumer Protection Unit shall be the screening point for the receipt of the federal criminal history records.

4.2.2.3 A license will not be denied based on the information contained in an FBI identification record until a person has a reasonable time to correct or complete the record, or has declined to do so. Procedures for obtaining a change, correction or updating an FBI identification record are set forth in 28 C.F.R. §50.12.

4.2.2.4 A criminal records check obtained for the purpose of doing business in any state, that was issued within the last 12 months and based on the fingerprints of the officer or person with access to the trust account, satisfies this requirement if the criminal records check is provided by the licensing state and received by that state from a central repository.

4.2.3 A corporate surety bond on the form provided in an amount of at least \$50,000 from a surety company authorized to do business in Delaware (or an irrevocable letter of credit with the consent of the Attorney General) as provided in 6 Del.C. §§2405A(b)(2), 2413A, and 2414A.

4.2.3.1 The amount of the bond may be required to be increased after consideration of the value of the applicant's business in Delaware and the balance of the trust account.

4.2.3.2 The term of the bond is continuous.

4.2.3.3 The bond shall run to the State for the benefit of the Attorney General and consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the applicant.

4.2.3.4 If the bond is amended, the licensee shall provide an amended copy of the original security bond to the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.3.5 No cancellation of a bond by the surety shall be effective unless written notice of

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an intent to cancel is filed with the Director of the Consumer Protection Unit of the Attorney General's Office at least 30 days before the effective date of cancellation.

4.2.3.6 A surety company that receives a claim against the bond shall immediately notify the Director of the Consumer Protection Unit of the Attorney General's Office. No payment shall be made without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.4 Evidence of insurance against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant in the amount of \$500,000. 6 Del.C. §2405A(b)(4).

4.2.4.1 Insurer must be authorized to do business in the State of Delaware and be rated at least A by a nationally recognized rating organization.

4.2.4.2 The deductible shall be no greater than \$5,000.

4.2.4.3 The policy shall not be subject to cancellation by the applicant without the approval of the Director of the Consumer Protection Unit of the Attorney General's Office.

4.2.4.4 The policy shall be payable to the Applicant, the individuals having agreements with the Applicant, and the State of Delaware, as their interests may appear.

4.2.5 Identification of trust accounts and an irrevocable consent permitting the Attorney General and/or the designee(s) of the Attorney General to review and examine accounts along with an overdraft notification agreement. 6 Del.C. §§2405A(b)(3) and 2422A.

4.2.6 Evidence of accreditation by an independent accrediting organization approved by the Director of the Consumer Protection Unit of the Attorney General's Office that assures compliance with industry standards. The following organizations have been approved (6 Del.C. §2406A(9)):

4.2.6.1 ISO 9001:2000

4.2.6.2 BSI Management

4.2.6.3 BYGI

4.2.6.4 Council on Accreditation for Children and Families.

4.2.7 Documentation of counselor certifications or a statement that a counselor will become certified within 12 months of employment. Certification shall be by a bona fide third-party provider approved by the Director of the Consumer Protection Unit of the Attorney General's Office such as:

4.2.7.1 the Association for Financial Counseling and Planning Education

4.2.7.2 the National Foundation for Credit Counseling

4.2.7.3 a college accredited by one of the six regional accreditation services. The requirement for certification is satisfied with a course worth at least 3 semester credits, or its equivalent, covering credit counseling or debt management.

4.2.3.4 a provider offering a training program that is approved after the curriculum is submitted to the Director of Consumer Protection for review. The program will, at a minimum, include a final examination that is administered by a proctor who verifies the identification of the person taking the test. 6 Del.C. §2406A(10).

4.2.8 A description of the three most common educational programs provided for Delaware residents and a copy of the materials. 6 Del.C. §2406A(11).

4.2.9 A description of the financial analysis and initial budget plan including any form or electronic model used to evaluate the financial conditions of individuals. 6 Del.C. §2406A(2).

4.2.10 A copy of each form of agreement used with Delaware residents. 6 Del.C. §2406A(13).

4.2.11 A schedule of all fees, including any recommended donations, used with Delaware residents. 6 Del.C. §2406A(14).

4.2.12 The application fee in the amount of \$2000. 6 Del.C. §2405A(b)(1).

4.3 The Director of the Consumer Protection Unit:

4.3.1 will make a preliminary decision on a completed application within 120 days unless additional information is needed. In that case, the period is extended by 60 days.

4.3.2 may deny a license application for any of the reasons in 6 Del.C. §2409A(b) including:

4.3.2.1 the application contains information that is materially erroneous or incomplete;

4.3.2.2 an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

4.3.2.3 the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

## PROPOSED REGULATIONS

4.3.2.4 the Attorney General, or designee, finds that the financial responsibility experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

4.3.3 shall deny a license as provided in 6 Del.C. §2409A(c) if no fee accompanies the application or if the Board of Directors of a not-for-profit or tax exempt applicant is not independent of the applicant's employees and agents.

4.4 An applicant must be notified in writing of a preliminary decision to deny the application within 7 days of the decision along with the reasons for the intended action. The notification must advise the applicant of the right to a hearing.

4.5 An applicant may request a hearing within 10 days after receipt of the preliminary decision to deny the application.

4.5.1 If an applicant does not timely request a hearing, the preliminary decision is final.

4.5.2 A hearing will be scheduled upon timely request by the applicant as provided in Subchapter IV of the Administrative Procedures Act.

4.5.3 The Director, or an attorney designated by the Director, will serve as hearing officer after a preliminary decision to deny a license is made.

### **5.0 Renewals**

5.1 Licenses shall expire one year following the date of issuance unless it is renewed as provided in 6 Del.C. §2411A.

5.2 Licensees are responsible for annual renewal whether or not a notice of renewal is received from the Consumer Protection Unit.

5.3 Renewal applications shall be on forms approved by the Director of the Consumer Protection Unit. The following shall be included with the completed renewal application form as described in the section of the Act indicated:

5.3.1 A non refundable fee of \$1000.00. 6 Del.C. 2411A §(b)(2).

5.3.2 Evidence of accreditation by an independent accrediting organization. 6 Del.C. 2411A §(b)(3).

5.3.3 Evidence of certification by applicants' counselors. 6 Del.C. 2411A §(b)(3).

5.3.4 A financial statement, audited by an accountant licensed to conduct audits, for the fiscal year immediately preceding the renewal application. 6 Del.C. §2411A(b)(3).

5.3.5 Evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the required trust account with terms consistent 6 Del.C. 2411A §(b)(5). [See Rule 4.2.4.1 through 4.2.4.4].

5.3.6 A statement disclosing the total amount of money received on behalf of each debtor who resides in this State to pay creditors, and the amount distributed to each creditor in the 12 months immediately preceding the renewal application, if any. 6 Del.C. §2411(a)(6).

5.3.7 The gross amount of money accumulated in the 12 months immediately preceding the renewal application pursuant to plans by or on behalf of individuals who reside in this State who are parties to agreements with the licensee. 6 Del.C. §2411A(a)(7).

5.3.8 A statement indicating the number of individuals who enrolled in debt management plans and the number of individuals who successfully completed debt management plans in the year preceding the renewal application.

5.4 Applications for renewal must be filed with the Director of the Consumer Protection Unit no fewer than 30 days or more than 60 days before the expiration.

5.5 If a timely and complete application for renewal is filed, a license remains in effect until the licensee is advised of a preliminary decision to deny the application along with the reasons.

5.6 An applicant may make a request for a hearing within 10 days after receipt of a preliminary decision to deny the renewal application pursuant to Subchapter IV of the Administrative Procedures Act. If no hearing is requested, the preliminary decision is final.

5.7 If a timely and complete application for renewal is not received in the Consumer Protection Unit by the expiration date of the license, the license is expired and the former licensee is prohibited from conducting business which requires a license for Debt Management Services in this State. The applicant may apply for a new

license.

## **6.0 Debt Management Services**

6.1 Before entering into an agreement for debt management services, a licensee must provide an itemized list of goods and services and disclose all fees as required under 6 Del.C. §2417A.

6.1.1 The list must be clear and conspicuous.

6.1.2 The list must be provided in a record the consumer may retain regardless of whether an agreement is reached for services.

6.2 No debt management services may be furnished until a certified counselor conducts the education and financial analysis required, and prepare a suitable plan if appropriate, as provided in 2417A(a) and the consumer is

6.2.1 given a copy of the financial analysis and plan.

6.2.2 informed in writing of the availability, at the consumer's option, of assistance by toll-free communication or in person to discuss the financial analysis.

6.2.3 informed that some creditors may be unwilling to negotiate with the provider.

6.2.4 given the separate disclosures required under 6 Del.C. §2417A(d).

6.3 Agreements must include the provisions required under 6 Del.C. §2419A.

6.3.1 Agreements must be accompanied by the "Notice of Right to Cancel" in bold-face type surrounded by bold black line as required under 6 Del.C. §2420A.

6.3.2 Any agreement that does not comply with the law or rules is voidable.

6.3.3 Agreements may be terminated as provided in 6 Del.C. §2426A.

## **7.0 Complaints**

7.1 Any person, including employees in the Consumer Protection Unit, may file a complaint against a licensee in writing on a form provided by the Consumer Protection Unit.

7.2 The Director may refer a completed and signed complaint to the Special Investigation Unit for investigation.

7.2.1 If, after review and/or investigation, there is insufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may sua sponte dismiss the complaint.

7.2.2 If, after review and/or investigation, there is sufficient evidence to support a finding the licensee is in violation of the Debt Management Services Act or the lawful rules promulgated under the Act, the Director may

7.2.2.1 enter a preliminary order directed to a licensee to cease and desist from any violation, to correct a violation including providing restitution, and/or to pay a civil penalty as provided in 6 Del.C. §2433A;

7.2.2.2 enter a preliminary order suspending or revoking the license of licensee as provided in 6 Del.C. §2434A;

7.2.2.3 without entering a preliminary order, assign the matter to a Deputy Attorney General for preparation and prosecution of a formal complaint before a hearing officer;

7.2.2.4 impose civil penalties and/or recover costs of enforcement; or

7.2.2.5 proceed in any other manner permitted under the Act.

7.2.3 A licensee has 10 days from receipt of a preliminary order in which to request a hearing before a hearing officer.

7.2.3.1 If no hearing is requested, the preliminary order becomes final.

7.2.3.2 If a hearing is requested, the matter will be assigned to a Deputy Attorney General as provided in 7.2.2.3.

7.2.4 When a hearing is requested following issuance of a preliminary order by the Director, enforcement is stayed pending a final determination by a hearing officer except in the case of an order issued with reference to 6 Del.C. §2433A(g)(2) or 2434A(c).

7.2.5 Any requested hearing will proceed as provided under the Administrative Procedures Act.

## **8.0 Hearings**

8.1 All hearings are open to the public.

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# PROPOSED REGULATIONS

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8.2 An individual may represent himself or herself in a hearing. An artificial entity shall be represented by an attorney authorized to practice law in Delaware.

8.2.1 Delaware Supreme Court Rule 72 is applicable to the admission of attorneys, who are not licensed in Delaware, *pro hac vice* before administrative agencies.

8.3 Testimony shall be under oath or affirmation.

8.4 The hearing officer shall preserve the record of the hearing including the pleadings and documentary evidence.

8.5 The hearing shall be recorded verbatim by a court reporter. The expense of preparing any transcript for any purpose, including an appeal, shall be borne by the person requesting it.

8.6 The Delaware Uniform Rules of Evidence will provide a reference for the hearing officer. However, the hearing officer may admit any evidence that reasonable and prudent individuals would commonly accept in the conduct of their affairs and give probative effect that evidence. Evidence may not be excluded solely on the ground that it is hearsay, but a decision may not be based solely on hearsay.

## **9.0 Summary Suspension.**

9.1 The Director of Consumer Protection, by designation of the Attorney General, may order a summary suspension of a license effective the date specified in the order as provided in 6 Del.C. §2434A (c).

## **10.0 Appeals**

10.1 Judicial review of regulations is authorized under 29 Del.C. §10141.

10.2 Judicial review of case decisions is authorized under 29 Del.C. §10142.

10.3 There is no automatic stay of enforcement of a decision when an appeal is filed from the final order of the Director or hearing officer. The requirements for a stay of enforcement are provided in 29 Del.C. §10144.

## **11.0 Trust Account**

11.1 All money provided to a licensee pursuant to a plan for distribution to creditors shall be deposited in a trust account within two (2) business days after receipt.

11.2 The licensee shall maintain separate records for each individual.

11.3 Each trust account shall be reconciled at least once each month. The balance must at all time equal the sum of the balances of each individual's account.

11.4 If the agreement is terminated or the plan fails, the licensee shall return the funds remaining in the trust account, less fees permitted under the Act, to the individual client.

11.5 A licensee shall notify the Director of the Consumer Protection Unit of the Attorney General's Office before a trust account is moved and shall provide the name, address, and telephone number of the new bank along with the new account number.

11.6 A licensee must enter an overdraft notification agreement that requires the financial institution to notify the Director of the Consumer Protection Unit of the Attorney General's Office in the event that an instrument is presented for payment and the trust account contains insufficient funds, regardless of whether the instrument is honored.

11.7 A licensee shall comply with all provisions related to the trust account required by 6 Del.C. §2422A.

## **12.0 Examinations**

12.1 An on-site examination of assets, securities, books, accounts, papers, and records of a licensee or affiliate can be conducted by an examiner designated by the Director with or without notice during regular business hours. The records shall document the information in 6 Del.C. §2427A including at least the following:

12.1.1 A file for each consumer containing the preliminary financial analysis prepared for the consumer, the original agreement, the consumer's total income along with the debt balance, the monthly payment due each creditor, and copies of the periodic statements provided to the consumer.

12.1.2 An activity record for each consumer including the account number, name, address, date of the agreement, total indebtedness, monthly receipts including the date of receipt, any fees charged, amounts disbursed to creditors including the payment date, and the estimated term of the agreement. The record shall also include any action taken to recover unpaid fees that may be owed by a consumer who has cancelled an agreement.

12.1.3 In the case of a settlement with a creditor for less than the principal amount due, the record shall include the terms of the settlement, the amount owed at the time of an agreement, the amount of the settlement, and the calculation of a settlement fee.

12.1.4 An alphabetical index of names, addresses, account numbers, date of agreement, and total indebtedness.

12.2 Any person who is connected or associated with the licensee may be examined, under oath, as to the facts and circumstances of any matter under examination.

12.3 A licensee shall pay all reasonably incurred fees, costs, and expenses directly related to an examination including travel expenses, lodging expenses, and a per diem for examiners. Payment shall be made within 10 days after receipt of a statement from the Director.

12.4 The Director may accept the report of a responsible supervisory agency from another state in lieu of an on-site examination.

## **13.0 Miscellaneous**

13.1 Computation of time. In computing any period of time prescribed in or allowed by these Rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or State legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or State legal holiday. If service is made by mail, three days shall be added to the prescribed period for response.

13.2 A list of licensees is available upon request to the Consumer Protection Unit or online at the address in Rule 3.0.

13.3 A licensee shall notify the Director of the Consumer Protection Unit within 30 days of receipt of a notice of civil litigation filed by or on behalf of an individual who was residing in Delaware at the time an agreement for services was signed or at the time the notice was served.

13.4 A licensee shall notify the Director of the Consumer Protection Unit within 10 days after a change of information specified in 6 Del.C. §§2405A or 2406A.

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## **FRAUD AND CONSUMER PROTECTION DIVISION**

Statutory Authority: 11 Delaware Code, Section 854A(e) (11 Del.C., §854A(e))

### **PUBLIC NOTICE**

#### **Identity Theft Passports**

The Attorney General in accordance with 11 Del.C. §854A(e) has proposed to adopt rules and regulations to implement the Identify Theft Passport program established under 11 Del.C. §854A. The rules provide a procedure for submitting a police report and application from a victim of identity theft in order to obtain a certificate and passport card from the Attorney General.

A public hearing will be held at 10:00 a.m. on December 4, 2006 in the Attorney General's conference room on the 6<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, 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 Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5<sup>th</sup> floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

#### **Proposed Rules and Regulations Identity Theft Passports**

### **1.0 Scope**

1.1 An identity theft passport is available to a person who is a victim of identity theft as defined in 11 Del.C. §854 and who has filed a police report with a law enforcement agency in this State.

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# PROPOSED REGULATIONS

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1.2 A law enforcement agency with jurisdiction over the residence of the victim shall take a report from a person who knows or reasonable believes that he or she has been the victim of identity theft. 6 Del.C. §2204(a).

1.3 An identity theft passport is not available for identity mistake or loss of documents containing identifying information.

## **2.0 Application**

2.1 A victim may request an application from the Office of the Attorney General, 820 N. French St. 5<sup>th</sup> Floor Wilmington, DE 19801, from the police agency taking the report, or online at <http://www.state.de.us/attgen/default.shtml>

2.2 The application will contain at a minimum:

2.2.1 The name, gender, date of birth, place of birth, address, and phone number of the applicant;

2.2.2 the county and state where the theft occurred;

2.2.3 a description of the identity theft incident;

2.2.4 the identity of the person who stole the information, if known;

2.2.5 the signature and certification of the applicant; and

2.2.6 any other information deemed necessary by the Attorney General.

2.3 The police agency that takes the police report is responsible for transmitting the report and the application to the Attorney General for further processing.

## **3.0 Qualification**

3.1 A designee of the Attorney General will review the application, police report, and any other information necessary to determine whether he or she is reasonably assured that the identity theft claim is legitimate and adequately substantiated.

3.1.1 Documents that may substantiate a claim of identity theft include, but are not limited to:

3.1.1.1 receipts or bills from creditors showing unauthorized use of a credit card;

3.1.1.2 utility accounts created using the applicant's name without permission;

3.1.1.3 fraudulent checks or bank statements; or

3.1.1.4 any other evidence that the applicant's identity has been used without consent to commit or facilitate a crime prohibited in Title 11 of the **Delaware Code**.

3.2 Only police reports submitted by a Delaware law enforcement agency will support an application for an identity theft passport.

3.3 An applicant who is approved will be issued the identity theft passport by the Attorney General.

## **4.0 Use of the Identity Theft Passport**

4.1 An identity theft passport can be presented as follows:

4.1.1 to a law enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone using the victim's identity;

4.1.2 to any of the victim's creditors to aid in a creditor's investigation and establishment of whether fraudulent charges were made using the victim's account(s);

4.1.3 to a consumer reporting agency as defined in the Fair Credit Reporting Act which must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft.

4.2 Acceptance or rejection of the passport presented to a law enforcement agency or credit as provided in 4.1.1 and 4.1.2 is at the discretion of the law enforcement agency or creditor.

## **5.0 Changes**

5.1 Name or address changes shall be reported promptly to the Consumer Protection Unit, Office of the Attorney General, 820 N. French Street 5<sup>th</sup> floor, Carvel State Office Building, Wilmington, DE 19801.

5.2 The identity theft passport shall be returned to the above location and a new passport will be issued with the new information.

## **6.0 Lost or Stolen Passports**

6.1 A person who is issued an identity theft passport shall immediately notify the Consumer Protection Unit of the Office of the Attorney General if the passport is lost or stolen.

6.2 The lost or stolen passport will be replaced upon proper application.

## **7.0 Expiration**

7.1 An identity theft passport will expire three years after it was originally issued.

7.2 An identity theft passport may be renewed if there are continuing detrimental effects of the identity theft that may be mitigated by the renewal of the passport.

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## **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)

### **PUBLIC NOTICE**

**SAN # 2000-23**

#### **1. Title of of the Regulations:**

Amendment to Regulation No. 1124 Control of Volatile Organic Compounds Emissions

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

Regulation 1124 establishes emission standards for sources emitting volatile organic compounds (VOCs). VOC emissions are precursors to the formation of ozone and Delaware does not meet the federal air quality standards for ozone. This amendment proposes to add a new section, Section 46, to control the emissions of VOCs from lightering operations that occur in the waters of the State. Lightering is the process where the draft of large ocean going vessels is reduced by bulk transfer of cargo (usually crude oil) from the ocean going vessels to smaller service vessels. This reduction in draft is necessary for the ocean going vessel to be able to proceed upriver. In 2002, more than 1,836 tons of VOCs were emitted during lightering operations. Lightering operations represented the largest stationary VOC emission source in Delaware.

Some of the VOCs emitted during lightering operations are also classified as hazardous air pollutants (HAPs). It was estimated that in 2002 nearly 200 tons of HAPs were emitted during lightering operations. These HAPs include benzene, toluene, xylenes, ethyl benzene and various polycyclic aromatic hydrocarbons (PAHs). Benzene is a known human carcinogen and benzo(a)pyrene, a PAH, has been classed as a probable human carcinogen. Exposure to the other HAPs can have a non-cancer impact on the public health, safety and welfare. The emissions of these HAPs will also be reduced under this amendment.

#### **3. Possible Terms of the Agency Action:**

None

#### **4. Statutory Basis or Legal Authority to Act:**

7 Delaware Code, Chapter 60

#### **5. Other Regulations that may be Affected by the Proposal:**

None

#### **6. Notice of Public Comment:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Monday, December 4, 2006 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

**7. Prepared By:**

James R. Snead (302) 323-4542 September 25, 2006

**1124 Control of Volatile Organic Compound Emissions (Formerly Reg. No. 24)*****(Break in Continuity of Sections)*****46.0 Crude Oil Lightering Operations.**

1/11/07

**46.1 Applicability.**

46.1.1 The requirements in 46.1 through 46.9 of this regulation, with the exception of 46.3.7 of this regulation, apply to the owner or operator of a lightering service that carries out crude oil lightering operations in the waters of the State. The requirement in 46.3.7 of this regulation applies to the owner of the crude oil being lightered in the waters of the State.

46.1.2 While carrying out emergency lightering operations, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation is subject only to the requirements of 46.8 of this regulation.

46.1.3 The owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation may be required to obtain, revise, or amend permits issued by the Department pursuant to Regulations 1102, 1125, and 1130 of 7 **DE Admin Code**, where applicable.

46.1.4 The requirements of 46.1 through 46.9 of this regulation are in addition to all other applicable State and Federal rules and regulations.

46.1.5 Nothing in 46.1 through 46.9 of this regulation shall be construed to require any act or omission that would be in violation of any rules or regulations of the United States Coast Guard or to prevent any act that is necessary to secure the safety of personnel, property, or the environment.

**46.2 Definitions.**

As used in 46.1 through 46.9 of this regulation, all terms not defined herein shall have the meaning given them in Regulation 1101 or in 2.2 of this regulation.

**"Baseline volume"** means the average annual volume, in barrels per year, of crude oil lightered in the waters of the State during calendar years 2004 and 2005. If an existing lightering service did not carry out lightering operations throughout 2004 and 2005, the baseline volume for that existing lightering service shall be the average annual volume of crude oil lightered in the waters of State during the 24 month period beginning with its first lightering operation after December 31, 2003.

**"Depressurization venting"** means the release of vapors to the atmosphere from the ship to be lightered, the service vessel or the vapor balancing system during controlled lightering operations.

**"Emergency lightering operations"** means the transfer of crude oil cargo to mitigate or prevent a cargo spill, to stabilize a vessel whose integrity has been compromised, or to comply with the requirements of a Coast Guard Captain of the Port Order issued under the authority of the Ports and Waterways Safety Act, 33 USC 1221, as implemented by 33 CFR 160.111.

**"Existing lightering service"** means any lightering service that carried out a lightering operation in the waters of the State with an operating permit prior to the effective date of 46.1 through 46.9 of this regulation.

**"Existing service vessel"** means a service vessel that has been used in a lightering operation in the waters of the State prior to the effective date of 46.1 through 46.9 of this regulation.

**"Lightering operation"** means the transfer of crude oil from the cargo tank of a ship to be lightered to the cargo tank of a service vessel. Transfers of crude oil from the cargo tanks of a lightering service's marine tank vessel to the cargo tanks of another marine tank vessel or reverse lightering is exempt from the requirements of 46.1 through 46.9 of this regulation.

**"Lightering service"** means any owner or operator that, under contract, carries out a lightering operation.

**"Marine tank vessel"** means any marine vessel, which is specifically constructed or converted to carry liquid bulk cargo in cargo tanks.

**"New lightering service"** means any lightering service that is not an existing lightering service.

**"New service vessel"** means a service vessel that is not an existing service vessel.

**"Ozone Action Day"** means a day that is predicted, based on forecasted weather conditions, to reach unhealthy ozone concentrations. Frequently called a Code Red Day, an Ozone Action Day is declared prior to 1430 hours (local time) for the following day.

"Service vessel" means the marine tank vessel receiving crude oil during a lightering operation.

"Ship to be lightered" means the marine tank vessel delivering crude oil during a lightering operation.

"Uncontrolled lightering operations" means the period or periods when VOC emissions are vented from the service vessel to the atmosphere during a lightering operation.

"Vapor balancing" means the collection and transfer of vapors displaced by the incoming crude oil from the cargo tank of a service vessel into a cargo tank of the ship to be lightered.

"Vapor control system" means an arrangement of piping and equipment used to control vapor emissions collected from a marine tank vessel. For the purposes of 46.1 through 46.9 of this regulation, vapor control system, also, includes vapor balancing.

"Vapor leak" means a gaseous leak that is detectable by sight, sound, or smell.

"Vapor tight service vessel" means a marine tank vessel has successfully demonstrated vapor tightness using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565 within the preceding twelve months.

"Waters of the State" means those waters within the boundaries of the State, including the 12 mile circle described from New Castle and extended to the low water mark on the eastern side of the Delaware River and extending below the 12 mile circle with the middle of the shipping channel through the Delaware River and Bay and extending to the Atlantic Ocean and including those waters of the territorial sea which are in direct contact with the coast of Delaware, extending from the line of ordinary low water seaward for a distance of 3 geographical miles. This definition shall include any waters beyond the 3-mile mark as authorized by Federal Law.

## 46.3 Standards.

46.3.1 When carrying out a lightering operation, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall collect and transfer the VOC emissions from the service vessel to the ship to be lightered by vapor balancing.

46.3.2 When vapor balancing, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall only use vapor tight service vessels.

46.3.3-2 Prior to vapor balancing, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall verify that all valves in the vapor balancing system of the service vessel are correctly positioned to allow the collection and control of VOC emissions.

46.3.4 During vapor balancing, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall verify that there are no vapor leaks in the vapor balancing system of the service vessel. Whenever a vapor leak is detected:

46.3.4.1 A first attempt at repair shall be made prior to the completion of the lightering operation.

46.3.4.2 If a vapor leak in the vapor balancing system of the service vessel can not be repaired prior to the completion of the lightering operation, the leak shall be tagged and recorded.

46.3.4.3 The vapor leak shall be repaired prior to the date that the service vessel is used in a lightering operation.

46.3.4.4 Following completion of the repair, the service vessel shall be leak tested using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565.

46.3.5 During lightering operations, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall only use service vessels equipped with submerged fill pipes.

46.3.6 When vapor balancing, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall request information from the operator of the ship to be lightered on the total number of depressurization ventings by the ship to be lightered during each lightering operation. The owner or operator of the lightering service is neither responsible for enforcing the information requirements of 46.3.7 of this regulation nor liable for any inaccuracies of such information.

46.3.7 When vapor balancing, the owner of the crude oil shall require the owner or operator of the ship to be lightered to provide the owner or operator of the lightering service the total number of depressurization ventings by the ship to be lightered at the conclusion of each lightering operation.

## 46.4 Compliance schedule.

46.4.1 The owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall comply with the following requirements.

46.4.1.1 The owner or operator of an existing lightering service shall provide the following information to the Department not later than 90 days after the effective date of 46.1 through 46.9 of this regulation.

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46.4.1.1.1 The name or identification of existing service vessels that are expected to be used in lightering operations in the waters of the State after 2006.

46.4.1.1.2 The expected date that the vapor balancing system will be installed on each existing service vessel or the date the vapor balancing system was first used, if the existing service vessel is equipped with a vapor balancing system.

46.4.1.2 The owner or operator of a lightering service shall provide the following information to the Department upon the initial use of a new service vessel in the waters of the State.

46.4.1.2.1 The name or identification of the new service vessel.

46.4.1.2.2 The date that the new service vessel commenced lightering operations in the waters of the State.

46.4.1.2.3 A statement of whether the new service vessel is equipped with a vapor balancing system. If not equipped with a vapor balancing system, a statement on the expected date that the vapor balancing system will be installed on the new service vessel or the reason that a vapor balancing system will not be installed on that new service vessel.

46.4.1.3 Compliance with standards.

46.4.1.3.1 The owner or operator of a new lightering service shall comply with the requirements of 46.3 of this regulation upon initial lightering operation or the effective date of this regulation, whichever is later.

46.4.1.3.2 The owner or operator of an existing lightering service shall comply with the requirements of 46.3.1 of this regulation to the greatest extent practicable and shall comply with the requirements of 46.3.2 through 46.3.6 of this regulation when vapor balancing.

46.4.1.4 Maximum allowable uncontrolled lightering volume.

46.4.1.4.1 Beginning 12 months after the initial lightering operation or the effective date of this regulation, whichever is later, a new lightering service's 12-month rolling total volume of uncontrolled lightering shall not exceed 5 percent of the new lightering service's total volume lightered for that same 12-month period.

46.4.1.4.2 Beginning May 1, 2008, the 12-month rolling total volume of uncontrolled lightering shall not exceed an existing lightering service's baseline volume multiplied by the percentages listed in Table 46-1 of this regulation.

<u>Beginning on</u>	<u>Maximum allowable uncontrolled lightering volume</u>
<u>May 1, 2008</u>	<u>80 %</u>
<u>May 1, 2010</u>	<u>61 %</u>
<u>May 1, 2012</u>	<u>43%</u>

46.4.1.5 The total volume of uncontrolled lightering for any given lightering operation shall be calculated using the following equation.

$$TUV = \sum_{i=1}^m (V)_i + \sum_{j=1}^n (EV)_j$$

Eq. 46-1

Where,

TUV = the total uncontrolled volume for each given lightering operation. This total volume is used in the determination of 12-month rolling total volume of uncontrolled lightering in 46.4.1.4 of this regulation.

V = the volume of crude oil transferred to the service vessel when displaced vapors are emitted directly to the atmosphere rather than collected and controlled by vapor balancing.

EV = the equivalent volume of crude oil transferred corresponding to the collected and controlled vapors emitted from the service vessel to the atmosphere as a result of depressurization venting. The equivalent volume of crude oil shall be calculated using paragraph (d)(i)(D)(10) of 40 CFR 63.1257 or a method approved by the Department.

i = the individual uncontrolled venting when transferring crude oil.

j = the individual depressurization venting.

m = the total number of uncontrolled ventings of displaced vapors when transferring crude oil for each given lightering operation.

n = the total number of depressurization ventings for each given lightering operation.

#### 46.4.1.6 VOC emissions reduction and audits.

Beginning in February 2010, the Department shall conduct an annual audit of lightering service records to identify the frequency and duration of VOC ventings from the ships to be lightered. If the Department finds that ventings from the ships to be lightered reduce the VOC emission reductions achieved by the lightering services to a level below the maximum allowable uncontrolled lightering volume required in Table 46-1 of this regulation, the Department shall implement solutions, which could include amending 46.1 through 46.9 of this regulation.

#### 46.4.2 Ozone Action Day limitations.

Beginning May 1, 2007, uncontrolled lightering operations shall be curtailed as follows on any day that the Department declares an Ozone Action Day.

46.4.2.1 Uncontrolled lightering operations shall not be carried out from 0230 hours until 1630 hours (local time) of the declared Ozone Action Day. However, if uncontrolled lightering operations have begun prior to the declaration of the Ozone Action Day, those lightering operations may continue until 0230 hours (local time) or until the service vessel is fully loaded, whichever is later.

46.4.2.2 If the Department declares consecutive Ozone Action Days, the owner or operator of a lightering service shall, to the greatest extent practicable, minimize uncontrolled lightering operations on the second and subsequent consecutively declared Ozone Action Days as follows:

46.4.2.2.1 Carrying out controlled lightering operations, if vapor balancing compatible service vessels and ships to be lightered are available.

46.4.2.2.2 Rescheduling the uncontrolled lightering operations to the periods of 1630 hours to 0230 hours (local time) of the second and subsequent consecutively declared Ozone Action Days.

46.4.3 No later than January 1, 2014 and every 5 years thereafter, the Department, owners or operators of existing lightering services subject to 46.1 through 46.9 of this regulation, and owners of crude oil subject to 46.3.7 of this regulation shall determine the feasibility of achieving a 5 per cent maximum allowable uncontrolled lightering volume. If a 5 per cent maximum allowable uncontrolled lightering volume is determined to be feasible, the Department shall amend the requirements of Table 46-1 of this regulation within two years. The amended requirements shall establish a maximum allowable uncontrolled lightering volume of 5 per cent.

46.4.4 If the feasible maximum allowable uncontrolled lightering volume determined in 46.4.3 of this regulation is greater than 5 per cent, the Department shall amend the requirements of Table 46-1 of this regulation within two years. The amended requirements shall establish the feasible maximum allowable uncontrolled lightering volume determined in 46.4.3 of this regulation.

46.4.5 Any changes to the requirements of Table 46-1 of this regulation shall be made in accordance with the requirements of 7 Del.C. Ch. 60.

#### 46.5 Compliance Plan.

46.5.1 Within 120 days after the effective date of 46.1 through 46.9 of this regulation or upon initial startup of each vapor balancing system, whichever is later, the owner or operator of a lightering service shall develop and implement a compliance plan that describes how initial and ongoing compliance will be demonstrated. The owner or operator of a lightering service shall make the compliance plan for each vapor balancing system available for inspection, upon request, by the Department.

#### 46.5.2 Initial Compliance.

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To demonstrate initial compliance, the owner or operator of a lightering service shall provide the Department with the information specified in 46.5.2.1 and 46.5.2.2 of this regulation.

46.5.2.1 A copy of the service vessel's vapor control system Approval Letter issued by or on behalf of the United States Coast Guard in accordance with 46 CFR 39.10-13 and 46 CFR 31.01-03 or United States Coast Guard approved equivalent.

46.5.2.2 A copy of the service vessel's initial test certification demonstrating vapor tightness using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565.

### 46.5.3 Ongoing Compliance.

The ongoing compliance demonstration plan shall include, at a minimum, the information specified in 46.5.3.1 through 46.5.3.5 of this regulation.

46.5.3.1 The recommended instrumentation for the continuous measurement and recording of the operating pressure of the service vessel.

46.5.3.2 The recommended operating and maintenance procedures for the vapor balancing system.

46.5.3.3 The recommended startup, shutdown, and malfunction plan for the vapor balancing system, which shall include the approved calculation methodology to determine the total uncontrolled volume in 46.4.1.5 of this regulation.

46.5.3.4 The recommended operating procedures to prevent inadvertent uncontrolled VOC emissions to demonstrate compliance with 46.3.3 of this regulation.

46.5.3.5 The recommended leak testing procedures to demonstrate compliance with 46.3.4 of this regulation.

46.5.4 To the extent practical, the lightering service's standard operating and maintenance manuals and standard log sheets may be used to satisfy the requirements of the compliance plan, provided these manuals and log sheets contain all of the data necessary to meet the individual requirements of 46.5.3 of this regulation.

### 46.6 Equivalent methods of control.

46.6.1 Non-vapor balancing control technologies can be installed to control VOC emissions during lightering operations. New and existing lightering services may apply for the approval of an alternative control technology by submitting a complete request in accordance with the requirements of 46.6.2 and 46.6.3 of this regulation.

46.6.2 Upon receipt of a written request, the Department may approve the use of an alternative control technology to satisfy the requirements of 46.3.1 of this regulation.

46.6.3 The written request must contain a complete description of the alternative control technology, proposed compliance demonstration plan, proposed testing procedures, proposed recordkeeping requirements, and the expected startup date.

### 46.7 Recordkeeping.

The owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall keep the records specified in this paragraph in a readily accessible location for at least five years. These records shall be made immediately available to the Department on verbal or written request. For the purposes of 46.7 of this regulation, the terms "readily accessible location" and "immediately available" may apply to records located on a service vessel.

46.7.1 The owner or operator of an existing lightering service subject to 46.1 through 46.9 of this regulation shall keep calculations, including documentation of data, required to determine the baseline volume of the lightering service.

46.7.2 The owner or operator of an existing lightering service subject to 46.1 through 46.9 of this regulation shall keep calculations, including documentation of data, required to determine the 12-month rolling total volume of uncontrolled lightering of their lightering service in accordance with 46.4.1.4 of this regulation.

46.7.3 Beginning on the effective date of 46.1 through 46.9 of this regulation or upon initial lightering operation in the waters of Delaware, whichever is later, the owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall keep the following information for each lightering operation.

46.7.3.1 The dates and times that the lightering operation began and ended.

46.7.3.2 The lightering location.

46.7.3.3 The name or identification of the service vessel or vessels involved.

46.7.3.4 The name or identification of the ship to be lightered.

- 46.7.3.5            The name or identification of the owner of the crude oil to be transferred.
- 46.7.3.6            The total volume of crude oil transferred during the lightering operation.
- 46.7.3.7            The total uncontrolled volume of crude oil transferred during the lightering

operation, including documentation of the data required to calculate the total uncontrolled volume in accordance with 46.4.1.5 of this regulation.

46.7.4 Beginning on the effective date of 46.1 through 46.9 of this regulation or upon the initial startup of a service vessel's vapor balancing system, whichever is later, the owner or operator of a lightering service shall keep the following information.

46.7.4.1            Vapor tightness documentation for the service vessel in accordance with 46.3.2 of this regulation. The documentation shall include, at a minimum, the information specified in 46.7.4.1.1 through 46.7.4.1.6 of this regulation.

- 46.7.4.1.1            The service vessel name or identification.
- 46.7.4.1.2            The name and address of the owner or operator of the service

vessel.

- 46.7.4.1.3            The date and location of vapor tightness test.
- 46.7.4.1.4            The vapor tightness test method used.
- 46.7.4.1.5            The test results.
- 46.7.4.1.6            The tester's name and signature.

46.7.4.2            Records of the total number of depressurization ventings by the ship to be lightered in accordance with 46.3.5 of this regulation, when vapor balancing.

46.7.4.3            Operating logs and the pressure monitoring results for the vapor balancing system of the service vessel, when vapor balancing.

46.7.4.4            Records of the occurrence and duration of a malfunction of the vapor balancing system of the service vessel, when vapor balancing.

46.7.4.5            Records of any corrective action taken, as a result of a malfunction, that was inconsistent with the startup, shutdown, and malfunction plan, when vapor balancing.

46.7.4.6            Records or logs of inspections conducted to prevent inadvertent uncontrolled VOC emissions in accordance with 46.3.2 of this regulation, when vapor balancing.

46.7.4.7            Records or logs of leak test inspections conducted in accordance with 46.3.4 of this regulation, when vapor balancing.

46.7.4.8            Maintenance logs and records of any repairs made in accordance with 46.3.4 of this regulation.

46.7.4.9            Records identifying whether vapor balancing was or was not conducted.

46.7.4.10            If vapor balancing was not conducted, records identifying the reason that vapor balancing was not attempted.

46.7.4.11            If vapor balancing was conducted and there was an uncontrolled volume of crude oil transferred during the lightering operation, records identifying the reasons the lightering operation was not fully controlled.

46.8            Emergency lightering operation exemption.

The owner or operator of a lightering service shall be exempted from the requirements of 46.1 through 46.9 of this regulation while carrying out emergency lightering operations, except for the requirements of 46.8.1 and 46.8.2 of this regulation.

46.8.1 The owner or operator of a lightering service that carried out emergency lightering operations shall submit a written notification to the Department within 24 hours of the completion of the emergency lightering operations. The notification shall include, at minimum, the following information.

46.8.1.1            A brief description of the emergency, which may be limited to the following:

46.8.1.1.1            The name, organization, and telephone number of the individual requesting the emergency lightering operation.

46.8.1.1.2            The name and location of ship to be lightered, and

46.8.1.1.3            The circumstances of concern.

46.8.1.2            The name, organization, and telephone number of the individual submitting the written notification.

46.8.1.3            The written notification may be submitted to the Department by fax or

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electronic mail.

46.8.2 The owner or operator of a lightering service that carried out emergency lightering operations shall submit a written report to the Department within 30 days following the completion of the emergency lightering operations. The report shall include, at minimum, the following information.

46.8.2.1 A brief description of the emergency, which may be limited to the following:

46.8.2.1.1 The name, organization, and telephone number of the individual requesting the emergency lightering operation.

46.8.2.1.2 The name and location of ship to be lightered, and

46.8.2.1.3 The circumstances of concern.

46.8.2.2 The names or identifications of the service vessels involved in the emergency lightering operations.

46.8.2.3 The dates and times that the emergency lightering operations started and ended.

46.8.2.4 The total volume of crude oil transferred during the emergency lightering operations.

46.8.2.5 A certification by a responsible official as to the truth, accuracy, and completeness of the written report.

46.8.2.6 The name and signature of the responsible official certifying the written report.

## 46.9 Reporting requirements.

46.9.1 The owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall submit to the Department an initial compliance certification not later than 90 days after the effective date of 46.1 through 46.9 of this regulation or upon initial startup of vapor balancing system for each service vessel, whichever is later. The initial compliance notification shall provide, at a minimum, the following information.

46.9.1.1 The name, address, and telephone number of the owner or operator of the service vessel.

46.9.1.2 The name or identification of the service vessel.

46.9.1.3 A copy of the service vessel's vapor control system Approval Letter issued by or on behalf of the United States Coast Guard in accordance with 46 CFR 39.10-13 and 46 CFR 31.01-03 or United States Coast Guard approved equivalent.

46.9.1.4A copy of the service vessel's initial test certification demonstrating vapor tightness using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565.

### 46.9.2 Reports of excess emissions.

The owner or operator of a lightering service subject to 46.1 through 46.9 of this regulation shall, for each occurrence of an excess emission, submit a report to the Department within 30 calendar days of becoming aware of such occurrence. Excess emissions can include, but are not limited to, failing to operate the vapor balancing system when practicable, inadvertently or knowingly venting VOCs from the vapor balancing system to the atmosphere during controlled lightering operations, conducting uncontrolled lightering operations on an Ozone Action Day during prohibited times, exceeding the maximum allowable uncontrolled lightering volume percentages in Table 46-1 of this regulation, etc. The report shall contain the following information, in addition to complying with any other reporting requirements required by the Department.

46.9.2.1 The name of the owner or operator of the lightering service.

46.9.2.2 The name or identification of the service vessel.

46.9.2.3 The date and time of first observation of the excess emission.

46.9.2.4 The cause and duration of the excess emission.

46.9.2.5 The corrective actions taken or the schedule to correct the conditions that caused the excess emission.

46.9.2.6 The estimated quantity of excess emission (pounds per lightering operation) and the operating data and calculations used in determining the magnitude of the excess emission.

46.9.3 The owner or operator of an existing lightering service subject to 46.1 through 46.9 of this regulation shall submit its baseline volume to the Department before May 1, 2007.

46.9.4 Beginning on February 1, 2008 and annually thereafter, the owner or operator of an existing lightering service subject to 46.1 through 46.9 of this regulation shall submit a report to the Department

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identifying the total volume of crude oil transferred for both controlled and uncontrolled lightering operations for each month of the previous calendar year.

**\*Please Note: As the rest of the sections were not amended, they are not being published. For more information, please contact the Division of Air and Waste Management.**

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## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### 2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)  
24 DE Admin. Code 2500

### PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §2509, proposes amendments to its regulation 9.0 relating to hospital pharmacies. Specifically, the amendment to 9.0 Hospital Pharmacy removes provisions relating to hospitals served by off-site pharmacies.

A public hearing is scheduled for Wednesday, January 17, 2007 at 9:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Mariah Krass at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Mariah Krass at the above address or by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

### 2500 Board of Pharmacy

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

## 9.0 Hospital Pharmacy

### 9.1 Definition:

A hospital pharmacy is defined as a pharmacy registered with the Board located in a hospital facility. "Hospital pharmacy" shall not include a pharmacy operated by a hospital facility at a location other than the site of a permanent facility at which in-patient care and medical services are rendered.

### 9.2 Personnel

9.2.1 Director of Pharmacy. The storage, compounding, repackaging, dispensing and distribution of drugs by a hospital pharmacy shall be under the direction, supervision and responsibility of the pharmacist-in-charge, hereinafter referred to as the Director of Pharmacy, who shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations. Written policies and procedures will be established defining the operation and scope of services provided by the hospital pharmacy. The Manual shall include policy and procedures concerning:

9.2.1.1 Preparation and sterilization of parenteral medications if done within the hospital pharmacy.

9.2.1.2 Establishment of specifications for procurement of drugs, chemicals and biologicals. The procedures are subject to the approval of the appropriate committee of the hospital.

9.2.1.3 Maintaining readily available inventory of emergency drugs both in the pharmacy and patient care areas. Current antidote information and telephone numbers of regional poison control centers must also be available.

9.2.1.4 Participation in the development of a Formulary or drug list for the hospital.

9.2.1.5 The filling and labeling of all containers from which drugs are to be administered in compliance with applicable Statutes and Regulations.

9.2.1.6 The records of the transactions of the pharmacy that are required by applicable law and that are necessary for accurate control and accountability. This should include procedures for wastage of controlled substances in all areas of the hospital.

9.2.1.7 Policies and procedures shall specify the duties to be performed by pharmacy personnel.

9.2.1.8 Discontinued drug procedures to insure that discontinued drugs and containers with worn, illegible or missing labels are returned to the pharmacy for proper disposition or disposal. All outdated products should be removed from all areas and stored in a separate section in the pharmacy for proper disposition or disposal.

9.2.1.9 A recall procedure that can be implemented to insure proper disposition of the recalled materials.

9.2.1.10 A policy for drugs brought in by patients.

9.2.1.11 A policy for the proper handling of investigational drugs must be in compliance with FDA and State requirements.

9.2.1.12 The pharmacist shall be involved with the utilization review process as it pertains to drug therapy.

9.2.2 Registered Pharmacists. The Director of Pharmacy may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws.

9.2.3 Supportive Personnel. Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and is responsible for the activities of those persons.

9.3 Absence of Pharmacist. When a pharmacist is not on duty, drugs may be provided for use by physicians and other authorized staff via night cabinets or other areas designated by the hospital, and in emergency circumstances by access to the pharmacy. A pharmacist shall be available to provide professional services.

#### 9.4 Night Cabinets or Other Designated Areas

9.4.1 These drug storage areas must be securely locked and substantially constructed in a manner which prevents easy entry.

9.4.2 Access must be limited to authorized personnel.

9.4.3 Contents and use procedures should be determined by the pharmacy and those departments with access to the night cabinet or other designated areas in accordance with the hospital's policies and procedures.

9.4.4 Drugs must be properly labeled and prepackaged in sufficient quantities as defined by the hospital.

9.4.5 Accountability records documenting withdrawal and replacement of controlled drugs must be readily available.

9.4.6 The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.5 Access to Pharmacy. When a pharmacist is not available and medications cannot be obtained immediately from any other source, authorized persons may enter the pharmacy and obtain drugs per procedures established by the hospital. The procedures must include the following stipulations:

9.5.1 Entry shall be by two persons; registered nurse or physician with another nurse, physician, or security person present approved by the hospital.

9.5.2 Persons authorized to enter the pharmacy shall indicate the name and strength and amount of drug removed, the date, time and their signature, and the name and location of the patient. The transaction shall be reviewed by the pharmacy when it reopens and incorporated into the hospital pharmacy's medication recordkeeping system.

9.6 Emergency Drugs. Emergency drugs must be available for use by authorized personnel at strategic locations throughout the hospital. The drugs must be available to authorized personnel and must be stored in a manner to preserve the integrity of the contents.

9.6.1 Emergency Drugs Defined - Emergency drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients.

9.6.2 Emergency drug supplies shall be clearly identified for emergencies. A list showing the contents and the strength and quantity of each item shall be attached to the exterior.

9.6.3 Removal of Drugs - Drugs shall be removed from an emergency drug supply only pursuant to a valid physician's order or by authorized personnel.

9.6.4 Notification - Whenever an emergency drug supply is accessed, the pharmacy or its designee shall be notified within 24 hours, and the pharmacy or its designee shall restock and reseal or replace the kit or cart within forty-eight hours.

9.7 Equipment and Texts. Each hospital pharmacy shall have the equipment and texts required by Board Regulation 3.0 and Regulation 10.0.

9.8 Drug Storage. Drugs must be stored in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.

9.9 Labeling

9.9.1 The drug dispensed for inpatient use shall contain a label, shall show the brand or established name and the strength of the medication. If the medication is prepacked, it must also show the source, lot number and expiration date, in compliance with the Board's prepacking regulation.

9.9.2 All drugs dispensed for outpatients must be labeled in compliance with the Pharmacy Statutes.

9.9.3 Admixtures in parenteral bags and bottles shall be labeled in accordance with Regulation 10.0.

9.10 Abbreviations. The hospital should establish a standard list of abbreviations to be used whenever medications are prescribed.

9.11 Outpatient Orders. Medication dispensed for outpatients via prescriptions are governed by applicable State and Federal Statutes Regulations. A patient profile must be maintained and counseling must be provided for each person according to Regulation 5.0.

9.12 Suspected Adverse Drug Reaction. When an adverse reaction is documented, the pharmacy department shall receive a copy.

9.13 Maintenance of Medication Orders. Patient Profile - A patient medication profile must be maintained for each inpatient whose medication is directly dispensed from the pharmacy. It must show the patient's name, location, age, allergies and diagnosis(es) as available. The profile must show the name, strength and quantity of the drug dispensed and appropriate directions and the initials of the dispenser. Prior to administration of the first dose, the pharmacist must examine the profile to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a significant potential for harm, the pharmacist should notify the prescriber and other appropriate persons. The profile must be retained and readily retrievable for 30 days after discharge.

9.14 Medication Error. Medication error as defined by the hospital shall be documented and reported immediately to the pharmacy. It should also be reported to the attending physician.

9.15 Monthly Inspections. A member of the pharmacy staff shall conduct monthly inspections of each nursing station and patient care areas where medications are dispensed, administered or stored. Such documented inspections shall verify that:

9.15.1 Disinfectants and drugs for external use are stored separately.

9.15.2 Drugs are stored under proper conditions.

9.15.3 No outdated drugs are present.

9.15.4 Distribution, administration, and disposition of controlled substances audits indicates proper recordkeeping and administration.

9.15.5 Emergency drug supplies and floor stock drug levels are properly maintained.

9.15.6 Drugs are properly secured.

~~9.16 Hospital Operating with an Off-site Pharmacy Provider.~~

~~9.16.1 Definition. A hospital operating with an off-site pharmacy is one that obtains pharmacy services from another hospital, community pharmacy, or infusion pharmacy that can provide services as necessary for operation.~~

~~9.16.2 Personnel.~~

~~9.16.2.1 There must be a Director of Pharmacy or Consultant Pharmacist available on an on-call procedure 24 hours per day. The storage, compounding, repackaging, dispensing and distribution of drugs by an off-site Provider Pharmacy shall be under the direction, supervision and responsibility of a~~

## PROPOSED REGULATIONS

~~Pharmacist in Charge or Director of Pharmacy. This person shall be responsible for operating the pharmacy in compliance with appropriate State and Federal Statutes and Regulations.~~

~~9.16.2.2 The Director of Pharmacy or Pharmacist in Charge may be assisted by additional registered pharmacists who are also responsible for compliance with the applicable laws. Any of these registered pharmacists may act as the Consultant Pharmacist for the institution if he/she is licensed to practice pharmacy in the State of Delaware. Additional supportive personnel may be utilized as required.~~

~~9.16.2.3 The Director of Pharmacy or Pharmacist in Charge must provide written policies and procedures establishing the operation and scope of services provided by the off-site Pharmacy Provider. The Policy and Procedure Manual shall include all items as outlined in 9.2 of this section. In addition, the manual shall include a written statement of pharmaceutical services provided and the responsibilities of the off-site Provider Pharmacy.~~

~~9.16.3 Monthly Inspections. The Director of Pharmacy or Consultant Pharmacist must perform monthly medication area inspections as outlined in 9.15 of this section.~~

~~9.16.4 Storage~~  
~~9.16.4.1 Drugs must be stored at the off-site Pharmacy Provider in compliance with State and Federal Statutes and Regulations and according to USP/NF requirements.~~

~~9.16.4.2 The Pharmacy Provider must also provide any special handling and/or packaging and/or storage conditions for compounded sterile preparations when delivering from the pharmacy to the institution as necessary to maintain the sterility and stability of the preparation. This includes any product that is frozen or that requires refrigeration.~~

~~9.16.5 Patient Profiles. The off-site Pharmacy Provider must maintain complete patient profiles as outlined in Regulation 5.0.~~

~~9.16.6 Medication Errors or Adverse Reactions~~  
~~9.16.6.1 Any medication errors or adverse drug reactions, as defined by the hospital, shall be documented and reported to the off-site Pharmacy Provider.~~

~~9.16.6.2 This information shall also be reported to the Director of Pharmacy, Pharmacist in Charge, or Consultant Pharmacist for their review and documentation for the patient profile.~~

~~9.16.7 Emergency Use Medications~~  
~~9.16.7.1 Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients, as determined by the prescriber, and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.~~

~~9.16.7.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.~~

~~9.16.7.3 Accountability for emergency use medications.~~  
~~9.16.7.3.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply and the pharmacy must restock the supply within a reasonable time to prevent harm to patients.~~

~~9.16.7.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.~~

~~9.16.7.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.~~

~~9.16.7.3.4 Violations of accountability procedures for emergency use medications may result in review proceedings before the Board.~~

**9 DE Reg. 85 (7/1/05)**

**\*Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Pharmacy is available at: <http://www.state.de.us/research/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>**

**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF AGRICULTURE****DELAWARE AGRICULTURAL LANDS PRESERVATION FOUNDATION**

Statutory Authority: 3 Delaware Code, Section 904 (3 **Del.C.** §904(a)(13))  
3 **DE Admin. Code** 1301

**1301 Regulations Governing the Delaware Agricultural Forestlands Preservation Program****Before The Delaware Agricultural Lands Preservation Foundation****ORDER NO. 2**

AND NOW, this 11th day of October, 2006, the Delaware Agricultural Lands Preservation Foundation (the "Foundation"), issues the following Order which shall be effective ten (10) days after the publication of this Order in the Delaware Registrar of Regulations:

1. Pursuant to its statutory authority, the Foundation has proposed for adoption a comprehensive set of regulations (the "Proposed Regulations") to be used in the administration of the Delaware Agricultural Forestland Preservation Program established pursuant to 3 **Del.C.** §931 (the "Program"). The Foundation conducted a public workshop on April 12, 2006 and a public hearing on Wednesday, June 21, 2006. At the Foundation's July 12, 2006 Board meeting, William A. Denman, legal counsel (the "Hearing Examiner") was designated as the Hearing Examiner to conduct a second public hearing for the purpose of receiving comments from the public on the Proposed Regulations.

2. The second public hearing was held at the Foundation's office on July 26, 2006. A copy of the Proposed Regulations and notice of the second public comment session was published in the Delaware Registrar on July 1, 2006. Notice of the June 21, 2006 hearing before the full board was published in both the Delaware State News and the News Journal on May 25, 2006 and May 24, 2006 respectively. Notice of the July 26, 2006 hearing before the Hearing Examiner was published in both the *Delaware State News* and the *News Journal* on June 28, 2006 and June 27, 2006 respectively.

3. On August 31, 2006, the Hearing Examiner submitted his Findings and Recommendations, a copy

of which is attached hereto as Exhibit A.

4. The Foundation considered the Proposed Regulations and the Findings and Recommendations of the Hearing Examiner at its regularly scheduled Board meeting held on October 11, 2006. At its October 11, 2006 Board meeting, the Foundation adopted a resolution pursuant to which the Foundation accepted the Findings and Recommendations of the Hearing Examiner.

5. A summary of the evidence and public comments submitted on the Proposed Regulations is set forth in the Findings and Recommendations of the Hearing Examiner attached hereto as Exhibit A.

6. For the reasons set forth in the Findings and Recommendations of the Hearing Examiner, the Foundation, by this Order, adopts as final regulations the Regulations attached to this Order as Exhibit B.

7. Several comments were received relating to various matters relating to the Proposed Regulations. The Foundation has considered these comments, and for the reasons set forth in the Findings and Recommendations of the Hearing Examiner, the Foundation believes that all such comments have been adequately addressed by the recommended changes set forth in the Hearing Examiner's Findings and Recommendations.

NOW THEREFORE, for the reasons set forth above and in the Findings and Recommendations of the Hearing Examiner, IT IS ORDERED:

1. That the "Guidelines Used For The Delaware Agricultural Forestlands Preservation Program" (the "Regulations") attached hereto as Exhibit B are adopted pursuant to 3 **Del.C.** §931, **et. seq.** The Regulations adopted herein shall become effective ten (10) days after their publication in the Delaware Registrar of Regulations.

2. That pursuant to 29 **Del.C.** §1134, the Foundation shall transmit a copy of this Order and the Regulations to the Delaware Registrar of Regulations for publication in the next issue of the Delaware Registrar of Regulations.

3. That a copy of this Order and the Regulations shall be mailed to each entity or persons that previously filed comments to the Proposed Regulations and to each person who has made a timely request for advance notice of the Foundation's regulation making proceedings.

4. That the Foundation reserves the right to hereafter alter, amend, or waive the Regulations adopted herein to the extent that the same may be allowed by law.

5. That the Foundation reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE FOUNDATION:

Robert F. Garey  
Lynwood L. Davenport  
Jack Markell  
Kevin Coyle, for John A. Hughes  
Allen Jones  
G. Ray Staats  
Austin Short, for Michael Scuse

Dated: October 11, 2006

**Findings and Recommendations of Hearing Examiner Regarding Proposed Forestland Preservation Program Regulations**

DATED: August 31, 2006

**INTRODUCTION**

Pursuant to its statutory authority, the Delaware Agricultural Lands Preservation Foundation (the "Foundation") has proposed for adoption a comprehensive set of regulations (the "Proposed Regulations") to be used in the administration of the Delaware Agricultural Forestland Preservation Program established pursuant to 3 **Del.C.** §931 (the "Program"). The Foundation conducted a public workshop on April 12, 2006 and a public hearing

on Wednesday, June 21, 2006. Notice of the June 21, 2005 hearing before the full Board was published in both the *Delaware State News* and the *News Journal* on May 25, 2006 and May 24, 2006, respectively. The affidavits of publication, documenting the publication of each such notice, are attached as Exhibit 1 and Exhibit 2, respectively. At the Foundation's July 12, 2006 Board meeting, I was appointed to act as the Hearing Examiner to conduct a second public hearing for the purpose of receiving comments from the public on the Proposed Regulations.

The second public hearing was held at the Foundation's office on July 26, 2006. A copy of the Proposed Regulations and Notice of this hearing was published in the Delaware Registrar on July 1, 2006. A copy of this Notice, together with the Proposed Regulations, is attached as Exhibit 3. Notice of the hearing was also published in both the *Delaware State News* and the *News Journal* on June 28, 2006 and June 27, 2006 respectively. Affidavits of publication, documenting the publication of said notices, are attached as Exhibit 4 and Exhibit 5.

### **THE HEARINGS**

No substantive comments were provided at the June 21, 2006 hearing. However comments were submitted at the July 26, 2006 hearing. As the Hearing Examiner, I presided over the July 26, 2006 hearing. Michael McGrath, Austin Short, and Cathy Mesick attended the July 26, 2006 hearing on behalf of the Foundation. While several members of the public appeared at the hearing, only two provided comments: Douglas Simpson and Timothy Kaden. At the conclusion of this hearing, the record remained open until July 31, 2006, for purposes of receiving written comments. The following written comments were submitted either at the hearing or subsequent to the hearing:

- (1) July 24, 2006 comments of Andrew T. Manus, Director, Conservation Programs, Delaware Chapter of the Nature Conservancy (Exhibit 6);
- (2) July 27, 2006 comments of Jennifer Gochenaur, Associate Director, Natural Resources Conservation, Delaware Nature Society (Exhibit 7);
- (3) July 30, 2006 comments of Lorraine M. Fleming (Exhibit 8);
- (4) July 31, 2006 comments of Eileen M. Butler, Natural Area Program Manager, Office of Nature Preserves, Division of Parks and Recreation, Department of Natural Resources and Environmental Control (Exhibit 9);

### **SUMMARY OF ORAL COMMENTS SUBMITTED AT THE HEARING**

As noted above, two members of the public spoke at the July 26, 2006 hearing. A brief summary of their comments is set forth below.

1. **Douglas Simpson**

Mr. Simpson commented that Section 5.9 of the Proposed Regulations should allow for the creation of wildlife food plots within forestlands. He also stated that if property proposed for inclusion within a forestland preservation area is located within a State Resource Area ("SRA"), that factor should not be taken into consideration in the appraisal process for purposes of valuing the purchase price for the easement.

2. **Timothy Kaden**

Mr. Kaden stated that the term "professional forester" as described in Regulation 1.1.10, should be defined.

3. **Donald Sharp**

While Mr. Sharp did not attend the hearing, Mr. Sharp contacted me directly by telephone. Mr. Sharp recommended that the Proposed Regulations provide a monetary incentive for property owners **not** to use the amount of residential use otherwise allowed by law. In addition, he suggested that incentives be incorporated into the Regulations to discourage hardwood forest production.

### **SUMMARY OF WRITTEN COMMENTS SUBMITTED**

1. **Andrew T. Manus** (Exhibit 6)

Mr. Manus' comments consisted of several questions and recommendations. Mr. Manus inquired

whether Section 1.0 would allow for 10+ acres of cropland to be “afforested” and included in the Program subject to Section 1.2. The answer to that question is no. (Although as soon as the land was successfully afforested it could be included in the program.)

Mr. Manus inquired if Section 8.2 of the Proposed Regulations refers only to established forestland preservation areas. The answer to that question is, yes.

Mr. Manus also inquired whether Section 8.3 refers to “Level 4” areas only. This question deals with the issue of what is considered a “growth area” as that term is used in the statute.

Mr. Manus also recommended that the “Ranking Criteria for Forestland Preservation Easement Applications” (Section 14) include the property’s proximity to an agricultural preservation district. He suggested that ten points be added to the ranking criteria for any property located within or adjacent to an agricultural preservation district.

Finally, Mr. Manus noted that Section 17.0 of the Proposed Regulations refers to “Agricultural Lands Preservation Easement Value and Purchase Price.” This section, as correctly noted by Mr. Manus, should be “Forestland Preservation Easement Value and Purchase Price.”

2. **Jennifer Gochenaur** (Exhibit 7)

Ms. Gochenaur commented that the Proposed Regulations are “quite comprehensive and mirror the highly successful agricultural lands preservation program.” She recommended however that the Proposed Regulations require “coordination” with DNREC (specifically the Division of Parks and Recreation’s Natural Areas Program and the Division of Fish and Wildlife’s Natural Heritage and Endangered Species Program) regarding forestland management plans on lands containing SRAs and State designated natural areas. Like Mr. Manus, Ms. Gochenaur also recommended including a fifth category for ranking applications – proximity to an agricultural preservation district.

3. **Lorraine M. Fleming** (Exhibit 8)

In Section 8.2, which requires the Foundation to “place greatest emphasis” on acquiring forestland preservation easements in areas where significant forestlands can be maintained for long-term forest reproduction, Ms Fleming suggested that the word “give priority to” be substituted for the phrase “place greatest emphasis on.” Ms. Fleming also inquired whether or not there was a definition for the phrase “long-term”.

Ms. Fleming expressed concern that if forestlands are located within a designated natural area or an SRA, timber harvesting may run counter to maintaining the natural values for which the specific property was designated. She recommended that the Proposed Regulations contain special provisions that would require interagency review (specifically with the DNREC Secretary’s office, the Natural Heritage Program, and the Natural Areas Preservation Program) with respect to timber harvesting in such areas.

4. **Eileen M. Butler** (Exhibit 9)

Ms. Butler’s written comments are briefly summarized below:

**Section 1.0:**

- There is no recognition given to forestlands within the Division of Fish and Wildlife’s Wildlife Action Plan;
- Wildlife habitat advantages are not considered as criteria for preservation in this section;
- Information from the Natural Heritage and Endangered Species Program should be used when developing forest management plans as proposed in Section 1.1.10;
- Criteria for eligibility should include forests that are within or adjacent to state designated natural areas and state resource areas;
- Land located inside a growth area should be allowed to be included, since by excluding such land, the Foundation would simply be writing off these lands.

**Section 2.0**

- The application form should include an area to indicate if the lands are within, or adjacent to, state designated natural areas and/or SRAs.

**Section 5.0:**

- It would be irresponsible to allow ditching and draining a forested wetland;
  - Horseback riding should not be allowed in forestlands because horses could bring with them invasive plant material in their hooves and provide excess

- nutrients that may have an impact on water quality within the watershed;
- Grazing of livestock should not be allowed because it would only degrade the site overall, inasmuch as cattle will eat and trample tree seedlings prohibiting regeneration of the forest;
- The reference to “open space” in Section 5.9 seems to contradict the reference to open space in Section 8.1.

**Section 14:**

- The ranking criteria for forestland preservation easement applications should include points for habitat values or ecological benefits (such as flood control).

**RECOMMENDATIONS****Doug Simpson’s Comments**

1. Regarding Mr. Simpson’s suggestion that “wildlife food plots” should be allowed within forestlands, 3 Delaware Code Section 934 of (a)(2) provides that activities relating to “wildlife habitat management” are allowed within preserved forestlands. I do not recommend any changes to the Proposed Regulations with respect to this issue, since the enabling legislation would allow any activity related to “wildlife habitat management”, which, in a proper case, would include “wildlife food plots”. Undoubtedly, there are many activities that would come within the definition of “wildlife habitat management”, and such decisions, subject to the supervision of the Foundation, are better left to the judgment of a professional forester.

2. Mr. Simpson also suggests that for purposes of determining the value of a forestland preservation easement, the fact that the proposed property is located within an SRA should **not** be taken into consideration. I do not recommend including such a provision in the Proposed Regulations. In valuing the lands proposed for inclusion, the appraiser should be able to take into consideration all factors affecting the value of the land, including but not limited to any existing restrictions applicable to the property.

**Timothy Kaden’s Comments**

3. Regarding Mr. Kaden’s suggestion that the term “professional forester” be defined in the Proposed Regulations, I am not recommending any changes to the Proposed Regulations on this issue. The term “professional forester” is defined in the enabling statute to mean “an individual who possesses at least a bachelor’s degree in forestry or a closely related field.” See, 3 **Del.C.** §902(19).

**Donald Sharp’s Comments**

4. As noted, Donald Sharp did not appear at any of the hearings. Regarding his recommendation that the Proposed Regulations provide a monetary incentive to encourage property owners not to use the amount of residential use otherwise allowed by law, I do not believe any changes to the Proposed Regulations are required. As a matter of practice, a property owner who sells a preservation easement is not required by law to take advantage of all of the residential use allowance provided for by the statute. In determining the amount of compensation to be paid to a property owner, the value of the allowed residential acreage is deducted from the purchase price. If a property owner elects to waive the residential acreage allowance, he/she may do so, which would increase the amount of compensation that would otherwise be payable. As a result, there is a built-in incentive for property owners not to use the maximum residential use allowance provided by statute, if that is their desire.

5. Regarding Mr. Sharp’s suggestion that an incentive should be incorporated to discourage “hardwood forest production”, such incentives would be contrary to the purpose of the forestland preservation statute which is to encourage the productive use of forestlands.

**Andrew T. Manus’ Comments**

6. Mr. Manus raised the interesting issue of whether or not cropland which does not constitute a forest could come within the forestland preservation area if the property owner agrees to create a forest. I do not believe that such a result was intended by the legislation. Under the statute, “forestlands” means a contiguous area of trees or forest cover at least 10 acres in size which is capable of being timbered and reforested as determined by the State Forester.” 3 **Del.C.** §902(6). Accordingly, I believe that in order for a property to qualify for inclusion within a forestland preservation area, a forest, or a contiguous area of trees, must exist at the time the

application is submitted.

7. Section 8.3 of the Proposed Regulations provides that "...the Foundation will only consider properties outside of state designated growth areas in the acquisition of forestland preservation easements." Mr. Manus raised the issue of whether or not Section 8.3 refers to "Level 4" areas only. This question of course deals with the issue of what is considered a "growth zone." By statute, in order for a property to be eligible for inclusion in a forestland preservation area, the property must be located outside a "Designated Growth Zone". 3 **Del.C.** §933(2). The statute defines "growth zone" to mean areas designated by the Foundation recognizing planned future development." Moreover, Section 904(a)(3) sets forth the process by which the "growth zone" will be identified, which process is beyond the scope of the Proposed Regulations. I do not recommend that the term "growth zone" be further defined in the Proposed Regulations at this time.

8. Mr. Manus also recommended that the "ranking criteria" include the property's proximity to an agricultural preservation district. This same recommendation was made by Jennifer Gochenaur. In Kent and Sussex County, there is a substantial amount of acreage of farmland that is part of an agricultural preservation district. This however cannot be said with respect to properties in New Castle County. Accordingly, in all likelihood, there would be a greater number of forestlands located in Kent and Sussex County that are in close proximity to agricultural preservation districts compared to New Castle County. Accordingly, adding "points" to forestlands located in close proximity to such districts would in all likelihood give priority to properties located in Kent and Sussex Counties, thereby making it more difficult to preserve forestlands located in New Castle County, Delaware. Accordingly, I do not recommend that the ranking criteria set forth in the Proposed Regulations be expanded to include the property's proximity to existing preservation districts.

9. Finally, Mr. Manus correctly pointed out the existence of a typographical error in Section 17.0 of the Proposed Regulations and accordingly, I recommend that the title of Section 17.0 be changed to read "Forestland Preservation Easement Value and Purchase Price."

#### **Jennifer Gochenaur's Comments**

10. Ms. Gochenaur suggested that the Proposed Regulations "require" coordination with DNREC regarding forestland management plans on lands containing SRAs and state designated natural areas. At this time I recommend against making any changes to the Proposed Regulations to mandate such "coordination." The enabling statute requires that included property have a "forest management plan prepared by a professional forester that addresses the landowner's forest management goals for the property." 3 **Del.C.** §933(9). The plan must contain, at a minimum, aerial and soil maps of the property, a description and analysis of the forest by management unit, and silviculture prescriptions for each management unit. The statute contemplates the existence of a "Forest Management Plan" that will be developed specifically for each parcel. Additional input from DNREC and other state agencies in the development of the Forest Management Plan is not mandated by the enabling statute.

11. Ms. Gochenaur's proposal to create a fifth category for ranking applications (proximity to an agricultural preservation district) has already been addressed in paragraph 8 above.

#### **Lorraine M. Fleming's Comments**

12. Ms. Fleming suggested that the word "give priority to" be substituted for the phrase "place greatest emphasis" as it appears in Section 8.2, so that Section 8.2 would read as follows: "The Foundation will give priority to acquiring Forestland Preservation Easements in areas where significant forestlands can be maintained for long-term forestry production." I recommend accepting this suggestion. While this may just be a matter of semantics, I do believe that the intent of the phrase "place greatest emphasis" was to merely "give priority to" areas where significant forestlands can be maintained for long-term forestry production. The regulations do not provide a definition of "long-term forestry reproduction." I do not believe however that it is necessary to provide a specific definition of "long-term" at this time.

13. Ms. Fleming recommended that the Proposed Regulations contain special provisions that would require interagency review with respect to timber harvesting in forestlands located within a dedicated natural area or an SRA. As noted above, the enabling statute requires forestlands included within a forestland preservation area to have a "Forest Management Plan" prepared by a professional forester. To the extent that forestry operations are located within a designated natural area or an SRA, these issues can be addressed in the "Forest Management Plan" prepared by the professional forester. To require additional regulatory reviews would provide additional regulation not contemplated by the enabling legislation and would perhaps discourage owners from

participating in the forestland program. As noted in the enabling statute, the “establishment of permanent forested areas throughout the state will serve the long-term needs of the forest industry while providing invaluable wildlife and habitat protections and open space benefits to the citizens of the state.” 3 **Del.C.** §931. A Forest Management Plan prepared by a professional forester will take these goals into consideration in adopting a plan.

#### **Eileen M. Butler’s Comments**

14. Regarding Ms. Butler’s comments regarding Section 1.0 of the Proposed Regulations entitled “Criteria for Forestland Preservation Area Eligibility,” the criteria set forth in the Proposed Regulations are for the most part set forth in the enabling statute. See 3 **Del.C.** §933. Accordingly, it would not be appropriate to modify the Proposed Regulations in a way that would make the regulations inconsistent with the statutory criteria. With respect to Ms. Butler’s recommendation that land located inside a “growth area” should be allowed to be included in forestlands, by statute, lands located within designated growth zones are not eligible. Accordingly, any regulation that would provide otherwise would be inconsistent with the statute. Regarding the suggestion that in order to qualify the property must be located within or adjacent to state designated natural areas or state resource areas, this would be inconsistent with the enabling statute.

15. With respect to Ms. Butler’s suggestion that the application form should include an area for the property owner to note whether or not his or her property is adjacent to state designated natural areas and/or an SRA, I do not recommend including such a provision in the application itself. The staff of the Foundation, as a part of its administrative review, will make this determination when reviewing the application. Many property owners will not know if their property is located adjacent to state designated natural areas and/or SRAs.

16. With respect to Ms. Butler’s comments regarding ditching, horseback riding, and grazing of livestock, I would merely observe that under the enabling statute, these activities are specifically addressed. Thus, Section 934(b)(5) would allow “ditching for drainage necessary to enhance or preserve forestlands.” Thus, not all ditching for drainage would be allowed, but only ditching for drainage necessary to “enhance or preserve forestlands.” Obviously, if a property owner embarks upon a course of action on designated wetlands, the numerous statutes and regulations that deal with the issue of wetlands would come into play. Under the enabling statute, non-commercial private recreational uses such as “horseback riding” are allowed provided that the activities do not adversely affect the forestland use of the property. Grazing of livestock is also allowed, subject to the prior approval by the State Forester. However, housing or shelters for livestock on forestlands are not allowed. Accordingly, the legislature has already addressed these issues and the Proposed Regulations cannot prohibit horseback riding, grazing of livestock or ditching and draining, except to the extent provided for in the statute.

17. Ms. Butler suggests that the reference to “open space” in Section 5.9 contradicts the reference to “open space” in Section 8.1. Section 5.9 provides in pertinent part that “no conversion of forestland to cropland, pasture land, open space or other types of land use shall be allowed.” Section 8.1 notes that the intent of the enabling legislation is to provide a framework for the acquisition of forestland preservation easements to protect in perpetuity those lands of the state most suitable for long-term utilization of forestland resources while at the same time **preserving** invaluable wildlife and habitat protections and open space benefits to the citizens of the State of Delaware. I believe that the primary purpose of the legislation is to preserve forestlands and to encourage forestry in Delaware. Section 5.9 is a direct quote from the enabling legislation, and I believe its intent is to make it clear that the deforesting of forestland solely for the purposes of creating open space for development purposes is not allowed. Forestlands will undoubtedly contain areas of open space, and to the extent that forestlands are preserved, one incidental benefit is preserving that open space (as opposed to developing the property for residential purposes). Accordingly, I do not believe there is any inconsistency.

18. Finally, Ms. Butler suggests that the ranking criteria for forestland preservation easement applications should include points for “habitat values” or “ecological benefits”. The purpose of the ranking criteria is to provide some objective mechanism for ranking forestland preservation easement applications. Undoubtedly, there are an infinite number of factors (both subjective and objective) that could sway the evaluator in terms of ranking a particular application. Habitat values and ecological benefits, such as flood control, are but a few. To the extent that the ranking criteria are expanded to include such subjective evaluations, the intent of the ranking criteria will be defeated and will provide for increased subjectivity in evaluating applications. I would note that the Proposed Regulations do attempt to capture a property’s biodiversity importance through the points provided for properties located in an SRA or Natural Area. Accordingly, I do not recommend broadening the ranking criteria at this time.

## CONCLUSION

For the reasons stated herein, I recommend that the Proposed Regulations be revised as follows:

1. By changing the title of Section 17.0 to read "Forestland Preservation Easement Value and Purchase Price."
2. That the words "give priority to" be substituted for the phrase "place greatest emphasis" as it appears in Section 8.2, so that Section 8.2 would read as follows: "The Foundation will give priority to acquiring Forestland Preservation Easements in areas where significant forestlands can be maintained for long-term forestry production."

A copy of the revised "Regulations" is attached hereto as Exhibit 10.

Respectfully submitted,

William A. Denman, Hearing Examiner

### 1301 Regulations Governing the Delaware Agricultural Forestlands Preservation Program

*(Break in Continuity of Sections)*

#### **8.0 Purchase of Forestlands Preservation Easements [3 Del.C., §936]**

8.1 The intent of this section is to provide a framework for the acquisition of Forestland Preservation Easements (hereinafter referred to as "Forestland Preservation Easements") to protect in perpetuity those lands of the state most suitable for long-term utilization of forestland resources while preserving invaluable wildlife and habitat protections and open space benefits to the citizens of the State of Delaware.

8.2 The Foundation will ~~[place greatest emphasis give priority to]~~ on acquiring Forestland Preservation Easements in areas where significant forestlands can be maintained for long-term forestry production.

8.3 Based on the long-range goal set forth in Section 8.2, the Foundation will only consider properties outside of state designated growth areas in the acquisition of Forestland Preservation Easements.

8.4 In the criteria established for the prioritization of Forestland Preservation Easements, the Foundation will also give weight to the Forest Land Evaluation (LE) score for the subject parcel and the location of the subject parcel in relation to State Resource Areas (SRAs) and state-designated Natural Areas.

*(Break in Continuity of Sections)*

#### **17.0 ~~[Agricultural Lands Forestland] Preservation Easement Value and Purchase Price~~**

17.1 The value of a Forestland Preservation Easement in perpetuity shall be the difference between the full market value and the forest-only value contained in the appraisal report.

17.2 The price paid by the Foundation for the purchase of a Forestland Preservation Easement may not exceed, but may be less than, the value of the Forestland Preservation Easement. [3 Del.C. §916(a)]

17.3 If an applicant is not satisfied with the appraisal provided by the Foundation, the applicant shall be entitled to have an independent appraisal performed at the applicant's expense by a qualified appraiser as specified in Section 15.4. The alternative appraisal shall be prepared in the same format as the Foundation's appraisal and shall be submitted to the Foundation within forty-five (45) days of the applicant's date of receipt of the appraisal provided by the Foundation. The forty-five (45) day period may be extended by the Foundation, provided the time extension does not delay the time frame established by the Foundation for making selection and acquisition decisions.

17.4 The review of the alternative appraisals by the Foundation shall be based on written submissions under such procedures as specified by the Foundation.

17.5 The maximum adjusted Preservation Easement value which the Foundation may accept is the difference between the adjusted forest-only value and the adjusted full market value, determined as follows:

17.5.1 The adjusted forest-only value shall equal the sum of:

17.5.1.1      The forest-only value determined by the applicant's appraiser, and  
17.5.1.2      Up to one-half of the positive difference between the forest-only value  
determined by the Foundation's appraiser and his/her values which exceed those determined by the applicant's  
appraiser.

17.5.2      The adjusted full market value shall equal the sum of:  
17.5.2.1      The full market value determined by the Foundation's appraiser, and  
17.5.2.2      Up to one-half of the positive difference between the full market value  
determined by the applicant's appraiser and his/her values which exceed those determined by the Foundation's  
appraiser.

**\*Please Note: As the rest of the sections were not amended since the proposal in the July 2006 issue, they are not being published. Please refer to the July 2006 Register, page 9 (10 DE Reg. 9) for more information. A complete set of the rules and regulations for the Forest Service is available at: <http://www.state.de.us/research/AdminCode/title3/400/index.shtml#TopOfPage>**

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## PESTICIDES SECTION

Statutory Authority: 3 Delaware Code, Section 1237 (3 Del.C. §1237)  
3 DE Admin. Code 601

### ORDER

**Notice Provided:** In accordance with 29 Del.C. §10115 and 3 Del.C. §1237, the State of Delaware, Department of Agriculture, published notice of proposed changes to the Pesticide Rules and Regulations ("Rules") in the *Delaware Register of Regulations* ("Register"), August 1, 2006. The notice provided text of the existing Rules with proposed changes, and provided a notice of date, time, and location for a Public Hearing at which the public could present their views. In addition to the notice published in the Register, the Department of Agriculture published notice of the Public Hearing in the Legal Classified Advertisements of the Delaware State News (publish date, September 10, 2006) and the News Journal (publish date, September 10, 2006). Notice of the proposed Rule changes were also mailed to the Chair, of the Governor's Pesticide Advisory Committee, and electronically mailed to the following organizations:

rosenberg@pestworld.org; Bonnie.Poli@usda.gov; cpdavis@UDel.Edu; Carroll@Brasures.com; Cory Whaley (whaley@udel.edu); Saveikis David (DNREC); CrowEA@mda.state.md.us; fitz.nancy@epa.gov; Llewellyn Gerald (DHSS); daw.harry@epamail.epa.gov; chorspray@aol.com; jwhalen@UDel.Edu; Lee@growmarkfs.com; lfleeson@vdacs.state.va.us; mccagro@shore.intercom.net; Susan King; wootten@udel.edu; Meredith William H. (DNREC) Univar (Brian D. Smith); Adapco, Inc. (James Barr); Griffin Greenhouse and Nursery Supply (Janet Haberle); Growmark FS Inc. (John Hendricks); Growmark FS, Inc. (Dennis Meeks); Growmark FS, Inc. (Matt Ivory); Growmark FS, Inc. (Michael Pochop); Harrell's Turf Specialty, LLC (Harrell's) (Brian Heffley); J C Ehrlich Chemical Company, Inc. dba Ehrlich Distribution (James P. Sickora); Lesco, Inc. (John Toorish); Lucas Tree Experts (Justin D. Loranger); Meherrin Agricultural & Chemical Co. (Robert Ekholm); Penn State Seed Company (Gary Hoffner); Pestcon Systems, Inc. (Betty Lilyquist); Residex Corp. (KenKosioiek); Residex Corp. (Peter Bonsted); Royster-Clark (Barry Harris); Royster-Clark (Gary Lamborn); Royster-Clark (Jimmy Warren); Seeton Turf Warehouse LLC (Lance Seeton); Southern Mill Creek Products (Carl Hinderer); Southern States Coop. Inc., Preston Service (Steve Majchrzak); Southern States Coop., Inc., Middletown Service (Samuel M. Mitchell, Jr.); Southern States Cooperative, Laurel Coop (Frank Depta); Southern States Dagsboro (Brian Schilling); Southern States Milford Cooperative, Inc. (Paul Collins); Southern States Smyrna Clayton Cooperative (Paul L. Walker III); SS Queen Annes Cooperative Service, Queen Annes County (Steven Pieshala); Thomas E. Moore, Inc. (J. Michael Cullen, Jr.); Thomas E. Moore, Inc., Kenton (W. David Pierce); Wade Christopher (DDA); billMcg@udel.edu;

bobmul@UDel.Edu; Bob Uniatowski; cpdavis@UDel.Edu; Cory Whaley; curt@fiferorchards.com; derby@UDel.Edu; dmcaron@udel.edu; kee@udel.edu; gcjohn@UDel.Edu; chorspray@aol.com; jomercer@udel.edu; Galipo Kenda (DDA); Kuehn Faith (DDA); mccagro@shore.intercom.net; Mark VanGessel; McReynolds Stephen (DDA); Pyne David (DDA); quintin@udel.edu; rtaylor@udel.edu; RbreedingUAP@aol.com; ronald.jester@mvs.udel.edu; Scuse Michael (DDA); sclark@terro.com; sbarton@UDel.Edu; Truehart@udel.edu; Towle Larry (DDA); wootten@UDel.Edu; Valann

A copy of the proposed *Rules* was also mailed to James Metzger, Wilmington, DE, in consideration of Mr. Metzger's past participation in pesticide rulemaking.

#### Summary of Evidence Received:

An email was received from Mr. Mark VanGessel, on July 31, 2006, with the suggestion to modify paragraph 14.1.8, by changing the word "immediate" to "within 24 hours of application." This recommendation would allow applicators a chance to spray multiple fields and then record all of one day's work at the end of the day. This recommendation was discussed at the September 19<sup>th</sup> Pesticide Advisory Committee meeting, and was supported by the Committee. There were no other written comments received and no one attended the Public Hearing on October 5, 2006, 6 p.m. to 7 p.m., at the Department of Agriculture building.

Based upon the evidence received from Mr. VanGessel, paragraph 14.1.8 was modified and the modification is incorporated into the *Rules*. This change is not substantively different from the proposed paragraph. The full text of the revised *Rules* is attached to this Order.

#### Decision and Order:

In accordance with the authority vested in the State of Delaware, Department of Agriculture, to establish rules and procedures for the enforcement of the *Delaware Pesticide Law*, 3 **Del.C.** Chapter 12, the attached, amended Pesticide Rules and Regulations are adopted. The effective date of these amendments shall be January 1, 2007.

Michael T. Scuse, Secretary of Agriculture  
Delaware Department of Agriculture

### 601 Delaware Pesticide Rules and Regulations

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

#### 14.0 Records

##### 14.1 COMMERCIAL APPLICATORS

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

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

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

14.1.3 The date and specific area treated.

14.1.4 The pest against which the pesticide was used.

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

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

- 14.1.6.1 Wind velocity and direction
- 14.1.6.2 Temperature
- 14.1.6.3 Relative humidity

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

14.1.8 Records required by Paragraph 14.1 shall be logged immediately [or no later than 24 hours] upon completion of the pesticide application, unless good cause is shown. Unless good cause is shown, records required by paragraph 14.1 shall be logged immediately or within 24 hours of completion of the pesticide application.

14.2 Restricted Use Pesticides Dealers

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

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

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

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

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

14.2.1.5 Date of the sale or transaction.

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

**\*Please Note: As the rest of the sections were not amended since the proposal in the August 2006 issue, they are not being published. Please refer to the August 2006 Register, page 236 (10 DE Reg. 236) for more information. A complete set of the rules and regulations for Pesticides is available at: <http://www.state.de.us/research/AdminCode/title3/600/index.shtml#TopOfPage>**

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## **DEPARTMENT OF EDUCATION**

### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 290

### **REGULATORY IMPLEMENTING ORDER**

#### **399 Approval of Teacher Education Programs**

##### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 399 Approval of Teacher Education Programs. The regulation is amended in order to bring the regulation in line with current procedures, add critical definitions and remove the references to the State Board of Education now that the Department of Education has total responsibility for the Program approval process for Educator Preparation Programs. The regulation is also amended to change the number of the regulation from 399 to 290 moving the regulation to Section 200 Administration and Operations and to change the name of the regulation to Approval of Educator Preparation Programs.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Friday August 18, 2006, in the form hereto attached as *Exhibit "A"*. Comments were received from the Delaware's educator education institutions concerning various time lines noted in the approval process. They requested that the time lines be the same as the NCATE time lines and the regulation was changed to reflect that request.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 399 in order to bring the regulation in line with current procedures, add critical definitions and remove the references to the State Board of Education now that the Department of Education has total responsibility for the Program approval process for Educator Preparation Programs. The regulation is also amended to change the number of the regulation from 399 to 290 moving the regulation to Section 200 Administration and Operations and to change the name of the regulation to Approval of Educator Preparation Programs.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 399. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 399 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 399 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** 290 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 290 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 9, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 9<sup>th</sup> day of October 2006.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

### ~~399 Approval Of Teacher Education Programs~~

~~**1.0 General Regulations:** All Programs of teacher education in Delaware Institutions of higher education that lead to teacher licensure shall be reviewed through a fair and uniform application of standards and all forms used shall be those developed by the Department of Education.~~

~~1.1 Reviews will be pursuant to the 1989 Standards of the National Association of State Directors of Teacher Education and Certification (NASDTEC).~~

~~1.2 Institutions that seek accreditation through the National Council for Accreditation of Teacher Education (NCATE) may meet the level set by the NASDTEC Standards by successfully completing the NCATE process, at both Institutional and individual Program levels.~~

~~1.3 All Institutions, whether they choose NCATE or NASDTEC routes of approval, also shall comply with the criteria for licensure and standards approved by the State Board of Education, where applicable, and these Regulations.~~

~~1.4 Institutions and Programs that seek accreditation through NCATE and the NCATE specialty organizations and fail to achieve such accreditation, may thereafter seek review pursuant to NASDTEC Standards for continued State approval.~~

~~1.5 On site reviews, by a team assembled by the administrator of Programs for Institutions of higher education shall take place every five to seven years, or, if through NCATE, in accordance with the schedule set by NCATE.~~

~~1.6 A final report on the reviews shall be forwarded to the State Board for action. The report shall make~~

recommendations for full approval, provisional approval, or disapproval of the Institution and of each of the individual Programs. Copies of the final action report shall be sent to the chief executive officer of the Institution and to the leader of the education unit.

1.7 All Programs approved under NASDTEC Standards, or through NCATE accreditation, and that meet Delaware criteria for licensure, will be forwarded to the NASDTEC Interstate Agreement Committee for review for reciprocity.

1.8 An Institution that has approved teacher education Programs may request interim provisional Program approval for new education Programs for licensure added between regularly scheduled State reviews. Documentation to be supplied to the administrator shall include:

1.8.1 A description of the Program for which approval is sought and other administrative information.

1.8.2 The curriculum for the Program, including syllabi for any new courses.

1.8.3 Descriptions of the expected outcomes of the Programs and of how those outcomes will be assessed.

1.8.4 Vitae for all new faculty delivering the Program.

1.8.5 An Institutional response to the specific NASDTEC or NCATE Standards for this Program area, and any applicable State Board of Education criteria.

1.8.6 Descriptions of materials, media and resources available for the Program, and how technology is integrated into the curriculum.

1.9 A Program meeting all requirements shall be given provisional approval; full approval may not be granted until a full on-site review of the Institution takes place, or is directed by the State Board.

1.10 Experimental or innovative Programs that do not meet the Standards or the criteria may be allowed by the State Board. Such an allowance may be requested by submitting the material for new Programs, and where the Standards or criteria are not met, a rationale for the exception(s). Experimental or innovative Programs that are approved by the State Board shall be given provisional approval; full approval may not be granted until a full on-site review of the Program takes place, or it is directed by the State Board.

1.11 Programs that have received only paper review, without full on-site verification will be granted provisional approval. Full approval may not be granted until a full on-site review of the Institution takes place, or is directed by the State Board.

1.12 All Delaware teacher education Programs shall undertake on-going self-study.

1.12.1 Units and Programs approved through NCATE accreditation, shall comply with NCATE self-study requirements. Copies of any reports to NCATE shall also be submitted to the administrator.

1.12.2 Institutions and Programs reviewed under NASDTEC requirements shall submit an annual report detailing how the weaknesses cited in the report have been addressed. The annual report shall be due to the administrator by June 30 of each year.

1.13 All persons participating as a part of the state team for an on-site review shall meet the requirements of 7.0 and 9.0.

1.14 All Programs shall submit portfolios to the Department of Education which meet the criteria listed in the Delaware Requirements for Portfolios.

1.14.1 Programs being reviewed by NCATE national specialty organizations shall submit to the Department of Education a copy of the materials sent to the specialty organization and additional materials to meet the requirements of 5.0.

1.14.2 Programs being reviewed by the Department of Education under the 1989 NASDTEC Standards shall submit to the Department of Education materials addressing the appropriate standards, and additional materials to meet the requirements set out in 5.0.

1.15 In general, Approved Programs of colleges and universities in Delaware do not have to meet the specific course count criteria for licensure; however, the elements of those courses counted for licensure purposes must be found within the approved Program. For example, if all of the elements of a science safety course are embedded in a science methods course, then two courses might be unnecessary. But, if a particular requirement is so glaringly absent, then a Program may be required to adopt a course to meet the criteria.

1.16 The review and revision of these regulations shall be accomplished with the advice of the teacher education Programs of Delaware colleges and universities, and with that of other interested parties.

## **2.0 Reviews Pursuant to NASDTEC Standards Only**

~~2.1 Institutions of higher education not seeking NCATE initial or continuing accreditation shall be reviewed under the Standards for State Approval of Teacher Education of the National Association of State Directors of Teacher Education, 1989 Revised Edition, the criteria for licensure of the State Department of Education, and the applicable regulations.~~

~~2.2 At least one year before the impending review, the Department of Education will contact the Institution. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution with the Department of Education about the administration of the process of review. The administrator shall meet or have a telephone conference with the liaison to establish the dates of the visit of the state team and the areas to be reviewed. The decisions made shall be communicated by the administrator and the liaison to all Programs. This process shall be complete by nine months prior to the review dates.~~

~~2.3 State Teams shall consist of five to seven members, one of whom shall be the chair, who shall be selected, in accordance with 6.0, at least six months prior to the review. Substitute members may be selected closer to the time of the review, if those initially selected are unable to serve.~~

~~2.4 The Institution shall prepare an Institutional Report which addresses the appropriate NASDTEC Standards, these regulations, where applicable, and the licensure criteria of the State Board of Education in addition to NASDTEC and or NCATE Standards.~~

~~2.4.1 The State Board licensure criteria includes Primary (K to 4), Middle Level (5 to 8), Special Education Elementary, Special Education and Secondary Block Requirements~~

~~2.4.2 Seven copies of the Institutional Report, and of all applicable catalogs, shall be submitted at least three months prior to the visit of the state team.~~

~~2.5 Each Program for which initial or continued approval is sought shall prepare a portfolio to demonstrate how NASDTEC Standards for that Program are being met. The portfolios shall meet the requirements of 5.0. Portfolios shall be submitted with the Institutional Report.~~

~~2.6 Portfolios for each Program shall be reviewed by appropriate Program portfolio reviewers of Department of Education and their reviews on the content and quality of each shall be submitted to the state team at least one month prior to the visit of the state team. Any conflict of interest of a Department of Education reviewer shall be disclosed on the review. If any portfolio is deemed inadequate, the administrator at his/her discretion may contact the Institution to supplement the submission or may return the portfolio to the Institution.~~

~~2.7 During the team visit, the state team will verify the accuracy of the portfolios, consider the review of the Department of Education, and produce a draft written report on the Program.~~

~~2.8 The finalized report of the state team member on the Program will be due to the administrator or the chair of the team, whomever is designated, three weeks after the last day of the visit.~~

~~2.9 Within 10 weeks of the last day of the visit, the administrator or the chair of the team, whomever is designated, will submit the final draft of the report to the Institution for the correction of factual errors only. The Institution shall return the final draft to the administrator, with factual errors and suggested corrections noted, within two weeks of its receipt.~~

### ~~3.0 Reviews under NCATE Standards, Procedures & Policies for the Accreditation of Professional Education Units:~~

~~3.1 Institutions shall submit letters of intent to seek accreditation to NCATE approximately 20 months before the scheduled visit. Statements of how Nacre's preconditions are met must be submitted before on-site reviews can be scheduled. Portfolios to be submitted to specialty organizations must be submitted to NCATE at least 18 months before the on-site reviews.~~

~~3.2 At least one year before the impending review, Department of Education will contact the Institution. The Institution shall appoint one person to at as liaison for all of the Programs at the Institution with the Department of Education about the administration of the process of review. The administrator shall meet or have a telephone conference with the liaison in regard to the dates of review and the areas to be reviewed. The decisions made shall be communicated by the administrator and the liaison to all Programs. This process shall be complete by ten months prior to the review dates.~~

~~3.3 State teams, and chairs, shall be selected in accordance with NCATE Partnership Agreement Guidelines, and notice given to the Institution at least six months prior to the site review. Substitute members may be selected closer to the time of the review, if those initially selected are unable to serve the NCATE and Delaware Partnership Agreement.~~

~~3.4 State team members and Department of Education subject area portfolio reviewers shall have participated in a training session on NCATE standards and procedures and state expectations (including NASDTEC Standards, where applicable) that is conducted or jointly developed by staff of NCATE and the State.~~

~~3.5 State team members shall be selected as follows:~~

~~3.5.1 Two members of the Department of Education, one of whom shall be the Administrator of Programs for Institutions of Higher Education, if the administrator has no conflicts as listed in 6.0.~~

~~3.5.2 Two to three other members, one of whom shall be a teacher, K to 12, and one of whom shall have experience in higher education or education administration.~~

~~3.6 The state team members shall be responsible for the following:~~

~~3.6.1 To meet with the NCATE Board of Examiners' (BOE) Team, and to assist in the informal deliberations of that group in accordance with NCATE requirements.~~

~~3.6.2 To review the reports of the specialty organizations (SOS) on those Programs covered by NCATE Standards, to verify the accuracy of the reports and the conclusions reached by the NSO's, and to submit a report making recommendations to the State Board on the decisions of the NCATE NSOs. To make recommendations including a description of how the review was verified; whether the conclusions of the NSOs are verified, verified with exceptions or substantially in error, and, whether the Program is recommended for approval, approval with exceptions, approval under NASDTEC Standards despite the conclusion of the NCATE SO, or disapproval.~~

~~3.6.3 To review the reviews by the Department of Education Program portfolio reviewers, to visit the Programs to verify the accuracy of the conclusions reached by the Department of Education Program portfolio reviewers, and to prepare a report and make recommendations (see 3.6.2 for recommendation levels) to the State Board on each Program covered by NASDTEC Standards which is reviewed by the state team member.~~

~~3.7 The report and the accreditation decision of the NCATE Unit Accreditation Board (UAB) will be used as part of the available data in determining whether the State will approve the university or college unit to operate teacher education Programs to be certified by the State Board of Education.~~

~~3.8 In addition to individual Program recommendations, the state team members shall make a recommendation on whether or not the State Board should authorize the university or college to operate teacher education Programs.~~

~~3.9 There are two separate procedures for the submission of portfolios to the Department of Education, depending upon whether the Program is required to send a portfolio to an NCATE specialty organization or not.~~

~~3.9.1 Programs sending portfolios to NCATE specialty organizations shall prepare their basic portfolio to meet the requirements of those organizations. A copy of whatever is sent to the specialty organization shall be sent to the state team administrator, along with whatever else is required to meet the requirements in 5.0 shall be submitted to the Department of Education at least six months prior to the visit of the state team.~~

~~3.9.2 Each Program which is not subject to review by a NCATE national specialty organization shall demonstrate how the NASDTEC Standards for that Program, and the licensure criteria of the State Board of Education in addition to NASDTEC and NCATE Standard are being met. The portfolios shall meet the requirement in 5.0. Portfolios shall be submitted at least six months prior to the visit of the state team.~~

~~3.10 Portfolios for each Program shall be reviewed by appropriate Program portfolio reviewers of the Department of Education, and their reviews on the content and quality of each shall be submitted to the state team at least three months prior to the visit of the state team. Any conflict of interest of a Department of Education reviewer shall be disclosed on the review.~~

~~3.11 In general, Approved Programs of colleges and universities in Delaware do not have to meet the specific course count criteria for licensure; however, the elements of those courses counted for licensure purposes must be found within the Approved Program. Thus, if the elements of one course are embedded within another, portfolios submitted to the state team administrator shall demonstrate how that is achieved and that teacher education students do incorporate the embedded learning in their performance.~~

#### **4.0 Programs that do not pass NCATE or NASDTEC review**

~~4.1 Institutions that do not receive NCATE unit accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the administrator and the liaison in which to submit additional materials which demonstrate how the Institution meets the NASDTEC Organization and Administration Standards. Such Programs will only be eligible for a grant of provisional approval for two years; renewal after that time would be contingent upon a full-site review.~~

4.2 Individual Programs submitted to NCATE specialty organizations that do not receive Program approval from those organizations, and which have exhausted or decided not to use the NCATE rejoinder process, have up to 10 working days after the last day of the site review to supplement portfolios, if needed, to demonstrate how they meet the NASDTEC standards.

4.3 Individual Programs that do not meet NASDTEC Standards at the full approval level, will be given either provisional approval or be disapproved to operate. All Programs given provisional approval shall:

4.3.1 Report annually to the administrator on the progress made on those standards that were not met.

4.3.2 Undergo portfolio submission and site review within 2 or 3 years, as determined by the State Board.

4.4 Institutions that do not receive full or provisional approval through review pursuant to NASDTEC, will not be permitted to operate Programs of teacher education in Delaware.

## 5.0 Delaware Requirements for Portfolios

5.1 Portfolios submitted for Program review shall contain the following elements:

5.1.1 A completed Delaware Portfolio Cover Sheet on the Program and an explanation of the following elements of the Program(s): conceptual framework, philosophy for its preparation, goals and objectives, and relationship of the Program(s) to the mission of the university or college.

5.1.2 Student course(s) of studies, with all required courses clearly marked.

5.1.3 Descriptions of all field experiences, student teaching, internships and practica. include the amount of time and describe the each experience, its intent and the type and amount of supervision involved. Documentation will be reviewed at site visit.

5.1.4 Descriptions of where the Program is located in the professional unit and its interrelationships with other Programs in the unit and the university or college.

5.1.5 List of faculty with descriptions of their primary assignments within the Program, including courses taught. Provide rank, tenure status, teaching experience and responsibilities in the unit and in the university or college. Do not include vitae, but have current vitae available for review, if needed, at the time of the visit.

5.1.6 Number of graduates from the Program(s), by year, for the last three years.

5.1.7 Syllabi for all courses if applicable, or submitted to NCAT.

5.1.8 Descriptions of the materials, media and resources available for the Program and how technology is integrated into the curriculum.

5.1.9 Requirements for entrance into the Program and for progression between levels, if any.

5.2 NCATE Specialty Organization and NASDTEC response document reference may be made to them in providing the information requested. Those Programs required to make response to the 1989 NASDTEC Standards, should do so by providing Sections 3.1, 3.2, 3.3 and 3.4; for an undergraduate Program; Sections 3.3, 3.4 and 4.1 for an entry level graduate Program; or 4.1, and 4.3 (where applicable), for non entry level Programs. The applicable Section 3.5.; or if a non entry level graduate Program, 4.

5.3 Performance exemplars that demonstrate student learning in the Program and the responses to the Standards for these requirements, including, for example: student portfolios, lesson plans developed by students, videos of student performance, compilations of research by students, assessments developed by students, resource sources developed by students, student log and instructor designed assessments. Exemplars presented may not consist of instructor designed assessments only.

5.4 Unless otherwise authorized by the Administrator of Programs for Institutions of Higher Education, all portfolios shall be submitted in expandable folders or binders, with a table of contents and numbered tab marked sections identifying the contents. Portfolios shall note how and where information on and performance exemplars of the criteria set out below are included in each Program portfolio. The portfolio shall also contain a listing of resource references. Portfolios shall reflect the Program as it is being delivered at the time of the site review. If substantial changes will be made between the time of the submission of the portfolio and the site review, those proposed changes shall be described in the portfolio.

5.5 Portfolios reviewed by Department of Education Program portfolio reviewers will be considered according to the criteria.

5.5.1 Portfolios shall demonstrate that the Program under review meets the criteria for licensure, where applicable. Institutions may meet this requirement in a variety of ways.

~~5.5.2 Portfolios shall demonstrate that the Program includes a sequence of graduated clinical experiences, such as supervised practica, internships, student teaching, that is incremental and occurs in a variety of settings and grade levels, including the areas of specialization, and that is focused upon Program objectives. Records of student participation shall be presented.~~

~~5.5.3 Portfolios shall demonstrate that students are taught the methodology of and have had clinical practice in the development and use of multiple types of assessments.~~

~~5.5.4 Portfolios shall demonstrate that methodologies on the use of technology in the classroom and other tools of inquiry are provided to students, and that students are provided clinical experiences which make it possible for them to integrate this learning into their instruction.~~

~~5.5.5 Portfolios shall demonstrate that strategies for effective teaching are suffused throughout the Program, and that students are taught specific methodology on teaching diverse learners, including exceptionalities and multicultural studies; classroom management; individual behavior management; and teacher expectations; and are given supervised field experiences which make it possible for them to integrate this learning into their instruction.~~

~~5.5.6 Portfolios shall specifically indicate how students receive methodology in teaching reading in the content area(s) of the student's specialization, and are able to integrate this learning into their instruction.~~

~~5.5.7 Portfolios shall demonstrate that, throughout the Program, students engage in reflection, particularly on their choices and actions for planning for instruction, assessment of teaching and learning, and teaching strategies. The portfolio should show how students grow over time as a result of the reflection.~~

~~5.5.8 Portfolios shall indicate how students learn about pupil growth and development and their relationship to teaching and learning, and demonstrate that students use age appropriate learning experiences.~~

## **~~6.0 Selection and Conduct of State Team Members~~**

~~6.1 Conflict of Interest: State team members shall not participate on a team if they have a close, active association with the Institution to be visited. A close, active association will be presumed where:~~

~~6.1.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution.~~

~~6.1.2 The member has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed.~~

~~6.1.3 The member has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years.~~

~~6.1.4 The member has ever been denied tenure by or forced to leave a position at the Institution.~~

~~6.1.5 The member currently serves on, or has been nominated to, any advisory group at the Institution.~~

~~6.1.6 The member maintains any current close personal or professional relationship with a person at the Institution.~~

~~6.1.7 The member is an employee of another Institution in the State with a teacher education Program.~~

~~6.2 Evaluation: The performance of team members will be evaluated, and team members will not be used when past performance is deemed inadequate.~~

~~6.3 Team members shall refrain from publicly criticizing Institutional personnel participating in the Program approval process. The Department of Education's evaluation system will provide a vehicle for receiving feedback to the Institution about the performance of their personnel.~~

### ~~6.4 Confidentiality:~~

~~6.4.1 All elements of the Program approval process shall be treated in a confidential and professional manner, including the contents of the Institutional Report, questions and answers raised during the visit, team deliberations and analysis, team decisions and the team report. The final report shall be made public.~~

~~6.4.2 Information acquired from the Institution during the Program approval process may not be used for matter other than Program approval without the permission of the Institution.~~

~~6.4.3 The documents from the Institution during the Program approval process are the property of the Institution, and should be returned to them at the end of the process.~~

~~6.4.4 Two archival copies of the Institutional Report and related documents will be maintained by the Department of Education.~~

~~6.5 The Department of Education personal subject area personnel shall not serve on a state team if they~~

have been a Program portfolio reviewer within the previous five years for the same Program area they are asked to site visit as a part of the state team.

~~6.6 All persons serving on a state team shall receive training on NCATE Standards and NASDTEC Standards.~~

### **7.0 Selection and Conduct of Department of Education Portfolio Reviewers**

~~7.1 Conflict of Interest, Department of Education Program portfolio reviewers shall disclose if they have a close, active association with the Institution from which the portfolio they are to review comes. A close, active association will be presumed where:~~

~~7.1.1 The reviewer is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution.~~

~~7.1.2 The reviewer has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed.~~

~~7.1.3 The reviewer has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years.~~

~~7.1.4 The reviewer has ever been denied tenure by or forced to leave a position at the Institution.~~

~~7.1.5 The reviewer currently serves on, or has been nominated to, any advisory group at the Institution.~~

~~7.1.6 The reviewer maintains any current close personal or professional relationship with a person at the Institution.~~

~~7.1.7 The reviewer is an employee of another Institution in the State with a teacher education Program.~~

~~7.2 Department of Education Program portfolio reviewers shall refrain from publicly criticizing the Program approval process or the portfolio review materials submitted to them for review. The State's system of review will provide a vehicle for giving feedback to the Institution about the portfolio.~~

#### ~~7.3 Confidentiality:~~

~~7.3.1 All elements of the Program approval process must be treated in a confidential and professional manner, including the contents of any portfolio reviewed. The final report to the State Board of Education shall be public.~~

~~7.3.2 Information acquired from the Institution during portfolio review may not be used for matter other than Program approval without the permission of the Institution.~~

~~7.3.3 The documents from the Institution during the portfolio review are the property of the Institution, and should be returned to them at the end of the process.~~

~~7.3.4 Archival copies of the portfolio review documents will be maintained by the Department of Education.~~

~~7.4 All persons serving as the Department of Education Program portfolio reviewers shall receive training on NCATE Standards and NASDTEC Standards.~~

~~7.5 Department of Education Program portfolio reviewers must receive clear notice of deadlines to be met. Meeting these deadlines is essential for the NCATE process to work, and subject area reviewers shall consider the meeting of deadlines for the review of portfolios assigned to them as the highest priority.~~

### **8.0 Conduct of Institutions**

~~8.1 The Institution shall facilitate a thorough and objective appraisal of its professional education Programs by the visiting team and Program reviewers.~~

~~8.2 The Institution may refuse the selection of a visiting state team member only if a likely potential conflict of interest can be demonstrated.~~

~~8.2.1 Notice of the refusal of a team member shall be given within 30 days of the notice to the Institution of the composition of the team;~~

~~8.2.2 The administrator shall make a good faith effort to find a trained substitute for the rejected member from those trained persons located in state.~~

~~8.2.3 In the event no available, trained substitute can be located, the administrator shall find one from out of state.~~

~~8.2.4 All transportation, hotel and food costs (on a par with those incurred by the BOE Team) of such a substitute, coming from out of state, or in state from a distance greater than sixty (60) miles, shall be borne~~

by the Institution making the refusal.

~~8.3—Institutional personnel shall refrain from publicly criticizing individuals participating in the Program approval process. The performance of state team members will be evaluated by Institutional personnel, and this information used in the determination of whether they will be selected to serve on subsequent state teams. The performance of Institutions will be evaluated by State team members, and this information shall be returned to the Institutions to assist in the revision of their procedures.~~

~~8.4—Institutions are encouraged to report perceived inadequacies of the state standards or procedures to visiting team members (particularly to the administrator) during the visit, rather than waiting for the evaluation instrument.~~

## **9.0—Training**

### **9.1—General Regulation**

~~9.1.1—All persons participating in NASDTEC and NCATE reviews of Programs of teacher education in Delaware Institutions of higher education shall receive training in the background of, rationale for and procedure of the review process, prior to participating in any review, paper or on site.~~

~~9.1.2—The Department of Education shall hold training sessions in order to have a sufficient pool of trained team members and Program portfolio reviewers available to serve.~~

~~9.2—State team members shall receive training in, at least, the following areas prior participating in any review; NCATE policy and procedure, NASDTEC policy and procedure, state standards and criteria, procedure for folio review, procedure for site visits, completion of team report, reimbursement of expenses and evaluation of the Institution and team members.~~

~~9.2.1—Persons taking part in state team member training shall be reimbursed for expenses in accordance with the Department of Education's guidelines. Persons coming from out of state can also be reimbursed for hotel accommodations in accordance with the Department's guidelines.~~

~~9.3—Department of Education Program portfolio reviewers shall receive training in, at least, the following areas prior participating in any review; NCATE policy and procedure, NASDTEC policy and procedure, state standards and criteria, procedure for folio review, completion of portfolio report and reimbursement of expenses for substitutes.~~

~~9.3.1—Department of Education staff will be responsible for obtaining additional or substitute Program portfolio reviewers for the areas for which they are responsible if that area has multiple Programs to be reviewed or if the subject area Associate or Specialist is unable to participate in the folio review.~~

~~9.3.1.1—Before any request is made of a person outside of the Department of Education to participate in folio review, permission must be received from the Administrator for Postsecondary Program Approval. Substitutes suggested will be scrutinized carefully, for the necessary expertise and potential conflicts.~~

~~9.3.1.2—Substitutes shall be selected prior to the training process to ensure that the substitute receives the required training. No untrained persons will participate in the process.~~

## **10.0—Format of the NCATE Joint Report**

### **10.1—NCATE Board of Examiners' portion of the report.**

~~10.1.1—The NCATE Board of Examiners team shall report on the design of Professional Education Standards, Candidate Standards, Faculty Standards and Governance and Resource Standards.~~

#### ~~10.1.2—The NCATE portion of the joint report shall consist of the following:~~

~~10.1.2.1—A summary of the Board of Examiners team's decision for each standard at the initial teacher preparation or advanced level.~~

~~10.1.2.2—Description of decision for each standard at the initial teacher preparation and advanced levels.~~

~~10.1.2.3—Exemplary practices of the professional education unit (if applicable).~~

~~10.1.2.4—List of individual interviewed and sources of evidence.~~

~~10.1.2.5—Addenda (if needed).~~

### **10.2—The state team's portion of the report**

~~10.2.1—The state team shall report on the individual Programs at the initial teacher preparation or advanced level;~~

#### ~~10.2.2—The state team portion of the report shall consist of the following:~~

~~10.2.2.1—A summary of the findings of the state team, with an emphasis on commonalities~~

between the findings on the individual Programs, and on identifying those Programs that have exemplary practices or show multiple weaknesses.

~~10.2.2.2 Description of decision for each Program at the initial teacher preparation and advanced levels.~~

~~10.2.2.3 List of individual interviewed and primary sources of evidence for the decisions made on each Program.~~

~~10.2.2.4 Team recommendations for each Program.~~

~~10.2.3 The state team will also submit a recommendation on whether the Institution, and each individual Program, should receive approval to operate in Delaware and under the NASDTEC Interstate Reciprocity Agreement.~~

#### **11.0 Rejoinder Process**

~~11.1 Within thirty (30) days after the state team visit, the team chair will prepare a report of the team visit and make a recommendation on each Program at the Institution.~~

~~11.1.1 Two copies will be sent to the Institution, one to the Institution's president, and the other to the Institution's liaison for the review process.~~

~~11.1.2 The Institution will be asked for reactions to the accuracy of the information in the Report of the Team Visit. The Institution has fifteen (15) days to respond.~~

~~11.2 Following the receipt of the NCATE Institutional Report, if unit accreditation is granted, the administrator shall schedule the submission of the Joint Report, and the recommendations of the state team, to the State Board. A copy of the Joint Report and the recommendations of the state team, and notice of the State Board will be sent to the Institution by certified or express mail or through a private mail and parcel delivery service.~~

~~11.3 Following the receipt of the NCATE Institutional Report, if unit accreditation is not granted, the Institution will have a period of time within which to submit additional materials, in accordance with 11.1.2, prior to the presentation to the State Board of the Joint Report, the report of the subsequent NASDTEC review, and the State Team recommendations. Copies of the report of the NASDTEC review, the Joint Report and the recommendations of the state team, and notice of the State Board meeting will be sent to the Institution by certified or express mail or through a private mail and parcel delivery service.~~

~~11.4 The Institution may rejoinder any of the recommendations of the state team, by a letter from the Institution's president (or the president's designee) notifying the Secretary of Education in writing of their intent to do so, accompanied by a short statement listing the recommendations at issue, and why they are contested. The letter must be received in the Secretary of Education's Office within ten (10) days of the delivery of the reports noted in paragraphs 2 and 3 of this Part.~~

~~11.5 The Secretary of Education shall schedule the recommendation, and if necessary a hearing on the rejoinder, before the State Board at a regularly scheduled meeting.~~

~~11.6 Written statements of position or legal memoranda or briefs may be submitted by the Institution or the state team. They must be received by the Secretary of Education's Office not less than ten (10) days prior to the date scheduled for the presentation of the recommendations to the State Board.~~

~~11.7 There will be no oral testimony before the State Board of Education. If the Institution wishes to make an oral summary of their position before the Board, they must file a request to do so not less than ten (10) days prior to the date scheduled for the presentation. The Institution's oral summary will be limited to 15 minutes; the state team will have 15 minutes to respond.~~

~~11.8 The Board, after considering the evidence presented and the arguments made by the parties to the controversy, will make a decision and so inform the parties in writing of that decision. The State Board of Education's decision is final.~~

### **290 Approval of Educator Preparation Programs**

#### **1.0 Definitions**

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

**"Accreditation"** means the decision rendered by NCATE when an institution's professional education unit meets NCATE [29] standards and requirements.

**"Administrator"** means Department of Education Associate charged with oversight of Program Approval

for college and university educator preparation Programs.

**“Associate Degree”** means a two (2) year degree conferred by a regionally accredited Institution of higher education or by a distance education Institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

**“Concurrent Agreement”** means the process where an NCATE review and a review by the Delaware Department of Education occur in a concurrent manner.

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

**“Department Approval”** means the process by which a specific professional education Program is recognized by the State Department of Education as meeting state standards for the content and operation of such Programs.

**“Department of Education Program Approval Regulations”** means the regulations set forth herein.

**“Educator”** means a person licensed and certified by the State under 14 **Del.C.**, Ch 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board but does not include substitute teachers.

**“Higher Education Degree Advanced Level”** means post baccalaureate degree Programs for the advanced preparation of teachers, and the initial or advanced preparation of professional school personnel. Programs at the advanced level lead to a master’s, specialist, or doctoral degree, or they may culminate in non degree licensure at the graduate level.

**“Higher Education Degree Basic (Initial) Level”** means programs leading to the initial preparation of teachers, commonly leading to a baccalaureate degree, a master of arts in teaching, or other programs designed to prepare teachers for initial licensure.

**“Institution”** means the college or university offering baccalaureate and post baccalaureate degree teacher preparation programs.

**“Institutional Report”** means a report submitted to NCATE as part of the review process that provides the institutional and unit context, a description of the unit’s conceptual framework, and evidence that the unit is meeting the NCATE unit standards.

**“National Recognition”** means approval of a program that has met the standards of a specialized professional association that is a constituent member of NCATE.

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

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

**“Professional Education Unit”** means the school, college, department or other administrative body within an Institution of higher learning that is primarily responsible for the preparation of teachers and other professional education personnel.

**“Program(s)”** means the sequence of courses and experiences required by a college or university for the preparation of professional education candidates to teach a specific subject or academic area, to provide professional education services, or to administer schools.

**“Proposal for Program Approval for Education Preparation Programs Which Do Not Have Specialized Professional Association (SPA) Approval”** means the formal proposal that the Department requires higher education institutions to complete and submit in order to seek approval for teacher education programs in a Professional Education Unit for which there is no national Specialized Professional Association (SPA) or for which the institution has not received approval from the SPA.

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

**“Specialized Professional Association (SPA)”** means national bodies such as the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) and the International Reading Association (IRA) whose program review standards have been approved by NCATE.

**“State Program Proposal Review Team”** means the team assembled pursuant to section 4.4 of this regulation.

**“State Review Team”** means the team assembled by the Department of Education pursuant to section 3.3 of this regulation.

## **2.0 Prior Approval from the Department Required to Offer Programs**

Pursuant to 14 Del.C. §122(b)(22), no individual, public or private educational association, corporation or Institution, including any Institution of post secondary education, shall offer a Program for the training of educators to be licensed in this State without first having procured the assent of the Department for the offering of such a Program. In order to be approved by the Department, Programs of Educator Preparation in Delaware Institutions of higher education that lead to educator licensure and certification shall meet State and, where applicable, national standards appropriate to the Professional Education Unit and the Professional Education Unit's individual Programs. All Professional Education Units and their Programs shall be reviewed through a fair and uniform application of standards.

2.1 The Department shall approve an Institution's Educator Preparation Programs. Approval is based on an institutional self study report and an on site visit by teams, one trained and selected by NCATE and one with Department representation. Institutions seeking approval of Educator Preparation Programs in the state shall meet the Professional Education Unit Standards established by NCATE and the appropriate Program standards established by the Specialized Professional Association. All Programs shall also comply with the state's regulations for Educator licensure and certification, the Delaware Teacher or Administrator Standards, and other applicable regulations and standards as are established by the Department or the Professional Standards Board, in cooperation and consultation with the Department and with the concurrence of the State Board of Education. Units having been accredited by NCATE and Programs receiving national recognition from a SPA will have met the above State regulations and standards.

## **3.0 NCATE State Partnership Review**

National Council for Accreditation of Teacher Education (NCATE) Standards, Procedures and Policies for the Accreditation of Professional Education Units and Programs.

3.1 The Department shall enter into agreements with the higher education governing boards and their Institutions for the purpose of coordination of review procedures on a five (5) year cycle for Institutions receiving their initial accreditation from NCATE and on a seven (7) year cycle for Institutions seeking continuing accreditation. As established by NCATE, such agreements shall include, but are not limited to, Program review timetables; format and content of Institutional reports; selection, number, and role of review team members; and the reporting of Program results.

### 3.2 Accreditation Request

3.2.1 Institutions shall submit to NCATE the forms required of NCATE ~~twenty four (24) months~~ as per established NCATE guidelines] to seek accreditation to NCATE twenty four (24) months before the scheduled visit.

3.2.2 Program reports submitted to Specialized Professional Associations shall follow the NCATE requirements and shall be submitted to NCATE ~~at least one (1) year~~ as per established NCATE guidelines] before the on site reviews.

### 3.3 The State Review Team

3.3.1 The state review team assembled by the Department to work concurrently with the NCATE review team shall have up to three (3) members designated by the Department and the Department shall agree to comply with the schedule established by NCATE in the review and on site visits of NCATE accredited Institutions.

3.3.1.1 State Review Team members shall be selected in accordance with NCATE Partnership Agreement Guidelines. A list of members shall be given to the Institution at least six (6) months prior to the site review. Substitute members may be selected and the Institution notified of the substitute members closer to the time of the review, if those initially selected are unable to serve.

3.3.1.2 State Review Team members shall be selected from the following:

3.3.1.2.1 Employees of the Department of Education, one of whom shall be the Administrator.

3.3.1.2.2 Persons who have experience in higher education or education administration.

3.3.1.3 State Review Team member(s) shall attend a training session on NCATE standards and procedures and State expectations paid for by the Department and conducted by the staff of NCATE.

3.3.1.4 The State Review Team members shall be responsible for the following:

3.3.1.4.1 Meeting with the NCATE review team and participating in informal

deliberations with that group in accordance with NCATE requirements:

3.3.1.4.2 Reviewing the reports of the SPAs on those Programs covered by SPA standards, to understand the conclusions reached by the SPA:

3.3.1.4.3 Reporting to the Secretary the decisions of the SPA including a description of the conclusions of the SPA and whether the Program was recommended for national recognition, national recognition with conditions or was not recognized by the SPA.

3.3.2 Conflict of Interest: Team members from the State shall not participate on a team if they have a close, active association with the Institution to be visited. A close, active association shall be presumed where:

3.3.2.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution:

3.3.2.2 The member has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed:

3.3.2.3 The member has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years:

3.3.2.4 The member has ever been denied tenure by or forced to leave a position at the Institution:

3.3.2.5 The member currently serves on, or has been nominated to, any advisory group at the Institution:

3.3.2.6 The member maintains any current close personal or professional relationship with a person at the Institution; or

3.3.2.7 The member is an employee of another Institution in the state with a teacher education Program.

## 3.4 Final Report

3.4.1 Institutions, Professional Education Units and Programs approved through NCATE accreditation and SPA recognition shall comply with NCATE self study requirements. Copies of any reports to NCATE shall also be submitted to the Administrator.

3.4.2 For Programs being reviewed by a SPA, Professional Education Units shall submit to the Administrator a copy of the materials sent to the Specialty Professional Association.

3.4.3 A final report on the reviews shall be forwarded to the Secretary for action. The report shall make recommendations for full approval, provisional approval, or disapproval of the Professional Education Unit and of each of the individual Programs. Units accredited by NCATE and Programs recognized by SPAs shall receive Department Approval.

3.4.3.1 Copies of the final report shall be sent to the chief executive officer of the Institution and to the leader of the Professional Education Unit.

3.4.4 The report, and the accreditation decision of the NCATE Unit Accreditation Board, and the recognition decisions of the SPAs shall be used to determine whether the Department will approve the Educator Preparation Programs.

3.4.5 In addition to individual Program recommendations, a recommendation on whether or not the Department should authorize the university or college to operate Educator Preparation Programs shall also be included.

3.4.6 Two copies of the final report and related documents shall be maintained by the Department and submitted to the State Archives as provided by the retention schedule for the State Archives.

## **4.0 Procedures for Teacher Education Programs in a Professional Education Unit Seeking Approval for Programs for Which There is no Specialized Professional Association (SPA) or for Which the Institution has Not Received Approval from the SPA.**

4.1 Higher education institutions seeking approval for Educator Preparation Programs in a Professional Education Unit for which there is no Specialized Professional Association (SPA) or for which the institution has not received national recognition from the SPA shall complete the Department's *Proposal for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval* and shall submit the Proposal to the Department at least six (6) months before the on site reviews.

4.1.1 In the case where a Program has been submitted to a SPA and subsequently was not granted national recognition by the SPA, the Professional Education Unit shall submit the Department's *Proposal*

for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval within two (2) months of [final] notification that the Program has not been [nationally] recognized [by the SPA].

4.1.2 In the case where a Program has been submitted to a SPA and no decision has been made about national recognition by the SPA, the Professional Education Unit shall submit the same Program report submitted to the SPA to the Department of Education.

4.2 Time lines related to the submission of data and other documentation of the Institution's compliance with Program approval criteria, the submission of Program reports, the role of Department review members, and the procedures for the reporting of Program review results shall follow NCATE guidelines.

4.3 At least one year before the impending review, the Institution shall contact the Department. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution under this Non SPA State Review. The Administrator shall meet with the liaison to establish the review process and to report the potential Programs to be reviewed. The decisions made shall be communicated by the Administrator and the liaison to all of the Programs. This process shall be completed nine months prior to the review dates.

4.4 Selection, Training and Conduct of the State Program Proposal Review Team Members for the Non SPA State Review

4.4.1 State Program Proposal Review Teams shall consist of at least three (3) members including the Administrator or designee, one of whom shall be the chair, who shall be selected at least six months prior to the review. The Institution shall be notified as to the members chosen for the review.

4.4.1.1 If those initially selected are unable to serve, substitute members may be selected and the Institution notified of the substitute members closer to the time of the review.

4.4.2 Conflict of Interest is the same as defined in 3.3.2

4.4.3 Training of State Program Proposal Review Team Members

4.4.3.1 State Program Proposal Review Team members shall receive training at the Department in the following areas prior to participating in any review; the purpose of the self study, the State Standards and criteria, the procedure for review of Program proposals, timelines for proposal review, the completion of team reports, and the reimbursement of expenses. Information about the NCATE accreditation process and the SPA process for national recognition, including the evaluation of the Professional Evaluation Unit and the background of, rationale for, and the review procedures of NCATE and the SPAs will also be part of the training.

4.4.4 Persons taking part in State Program Proposal Review Team member training shall be reimbursed for expenses in accordance with the Department's guidelines.

4.5 The Program shall prepare the Proposal which shows how it meets the Department of Education Program Approval Regulations and the Delaware Licensure and Certification Regulations.

4.5.1 Five (5) copies of the Proposal and all additional documentation shall be submitted [at least six (6) months as per established NCATE timelines] prior to the visit of the State Review Team.

4.5.2 Proposals and additional materials requested for each Program shall be reviewed by appropriate Program Proposal reviewers at the Department and the review on the content and quality of each, where possible, shall be made available to the State Program Proposal Review Team at least three (3) months prior to the on-site visit of the NCATE and State Teams. In the case of a Program submitted to a SPA in accordance with NCATE guidelines, where the SPA has not nationally recognized the Program, the Program proposal reviewers shall make their Program review available for the State Review Team at least one (1) month prior to the on-site visit. If any aspect of the Proposal is deemed inadequate, the Administrator may contact the Institution to supplement the submission or may return the Proposal to the Program.

4.5.3 The State Program Proposal Review Team shall verify the accuracy of the Proposal, consider the Department review and write a draft report on the Program. The report shall make recommendations for full approval, provisional approval, or disapproval of the Program.

4.6 The final report of the State Program Proposal Review Team members on the Program(s) shall be due to the Administrator or the chair of the team three (3) weeks after the last day of the visit.

4.7 Within ten (10) weeks of the last day of the visit, the Administrator or the chair of the State Program Proposal Review Team shall submit the final draft of the report to the Program for the correction of factual errors only. The Program shall return the final draft to the Administrator with factual errors and suggested corrections noted, within two (2) weeks.

4.8 Professional Education Units shall submit a report for any provisionally approved Programs as

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requested by the Department. The report shall detail how previous weaknesses, if any, have been addressed.

### **5.0 Provisional Program Approval for New Programs**

5.1 An Institution that has approved educator preparation Programs may request interim provisional Program approval for new education Programs added between regularly scheduled reviews. The following documentation shall be supplied to the administrator:

5.1.1 A description of the Program for which approval is sought and other administrative information:

5.1.2 The curriculum for the Program, including syllabi for any new courses:

5.1.3 Descriptions of the expected outcomes of the Programs and of how those outcomes will be assessed:

5.1.4 Vitae for all faculty delivering the Program; and

5.1.5 Descriptions of materials, media and resources available for the Program, and how technology is integrated into the curriculum or Program.

5.2 An Institution currently operating approved educator preparation Programs may seek approval for a new specialization in a currently operating Program in teaching, specialist services or administrative area provided the documentation submitted contains sufficient justification to warrant the new specialization. The Institution is encouraged to collaborate with the Department during the Program's initial planning. The Institution must identify the Program objectives for the new Program from which the curriculum shall be developed.

5.3 Experimental or innovative Programs that do not meet NCATE standards may be allowed by the Department. Such an allowance may be requested by submitting the material for new Programs, and where the standards are not met, a rationale for the exception(s). Experimental or innovative Programs that are approved by the Department shall be given provisional approval; full approval may not be granted until a full on site review of the Program takes place, or it is recommended and approved by the Secretary.

5.4 Programs or specializations, such as those described in 5.1, 5.2, and 5.3 above, that have received only paper review, without full on site verification, will be granted provisional approval. Full approval may not be granted until a full on site review of the Institution takes place, or is recommended and approved by the Secretary.

### **6.0 Professional Education Units that do not Receive Accreditation by NCATE**

6.1 Professional Education Units that do not receive NCATE accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the Institution and the Administrator in which to submit additional materials which demonstrate how the Institution meets the NCATE Standards and SPA Program Standards. Such Units will only be eligible for provisional approval for three (3) years; renewal after that time will be contingent upon a full site review.

6.2. Programs that do not receive SPA recognition should submit materials to the Department in accordance with the provisions set forth in 4.0.

6.3 Programs that do not meet the [NCATE SPA] standards, Delaware Teacher or Administrator Standards, or the State's licensure and certification regulations at the full approval level, shall be given either provisional approval or not be approved to operate. All Programs given provisional approval shall:

6.3.1 Report annually to the Administrator on the progress made on those standards that were not met.

6.3.2 Undergo Program proposal review submission and site review within three (3) years from the date of provisional approval.

6.4 Institutions that do not receive full or provisional approval through review pursuant to NCATE Standards or Delaware Program Approval Regulations shall not be permitted to operate licensure Programs in Delaware.

### **7.0 Required Format for the State Report**

The format of the State Report shall follow the format consistent with NCATE procedures and shall include recommendations on whether the Professional Education Unit and each individual Program shall receive approval to operate in Delaware.

**8.0 Rejoinder Process****8.1 NCATE Review**

8.1.1 If the Professional Education Unit accreditation is not granted by NCATE, the Institution may contest any of the recommendations through the NCATE rejoinder process. If a Program is not nationally recognized by a SPA, the Institution may contest any of the recommendations through the SPA rejoinder process. The Department shall accept the decision of NCATE or a SPA when their rejoinder process is followed.

**8.2 Non SPA State Review**

8.2.1 Within thirty (30) days after the State Review Team visit, the team chair shall prepare a report of the team visit, make a recommendations on the Program(s) and send ~~two~~ **three** copies to the Institution, one to the Institution's president, ~~the other~~ **one to the head of the professional education unit and one** to the Institution's liaison for the review process.

8.2.1.1 The Institution shall respond within fifteen (15) days as to the accuracy of the factual information in the report of the team visit.

8.2.2 Intent to contest the recommendations: A letter shall be sent from the Institution's president or ~~designee~~ **the head of the professional education unit** designee notifying the Secretary of the intent to contest the recommendations accompanied by a short statement explaining the rational for contesting the review. The letter must be received in the Office of the Secretary within ten (10) days of the delivery of the reports.

8.2.2.1 The Secretary shall review the materials submitted by the Institution including written statements of position, documents, and comments supporting the claims.

8.2.2.2 The Secretary, after considering the evidence presented and the arguments made by the parties, shall make a decision and so inform the ~~parties~~ **institution's president and the head of the professional education unit** in writing of that decision. The decision of the Secretary is final.

**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 292

**REGULATORY IMPLEMENTING ORDER****398 Degree Granting Institutions of Higher Education****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 398 Degree Granting Institutions of Higher Education in order to add definitions and improve the clarity of the process and of the appeal procedures described in the regulation. The title and the number of the regulation have also been changed to 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education thus moving the regulation from the 300 Section to the 200 Section of the Administrative Code.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Monday July 24, 2006, in the form hereto attached as *Exhibit "A"*. A definition of "Accrediting Agency" has been added to the definitions to be inclusive of all accrediting agencies referred to in the regulation. The State Board requested that for clarity the words "of the staff" be inserted after the word members in section 3.2.6. No other comments were received.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 398 in order to add definitions and improve the clarity of the process and of the appeal procedures described in the regulation. The title and the number of the regulation have also been changed to 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education thus moving the regulation from the 300 Section to the 200 Section of the Administrative Code.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 398. Therefore, pursuant to 14 **Del.C.** §122 (b) (8), 14 **DE Admin. Code** 398 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 398 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** 292 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 292 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 (b) (8) on October 19, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of October 2006.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 19<sup>th</sup> day of October 2006

**STATE BOARD OF EDUCATION**

Jean W. Allen, President  
Richard M. farmer, Jr., Vice President  
Mary B. Graham, Esquire  
Gregory A. Hastings  
Barbara B. Rutt  
Dennis J. Savage  
Dr. Claibourne D. Smith

**Exhibit B****~~398 Degree Granting Institutions of Higher Education~~****292 Post Secondary Institutions and Degree Granting Institutions of Higher Education****1.0 Definitions**

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

**["Accrediting Agency"** means a National, Regional, or Specialized Accrediting agency or association that appears on the list of recognized accrediting agencies published by the United States Secretary of Education or any other accrediting agency the Delaware Secretary of Education, deems within his or her discretion, to be reliable or be equivalent to those on the published list."]

**"Agent"** means any person representing an institution or employed by an institution, that contacts persons in any manner for the purpose of soliciting enrollment in any course, program, or degree.

**"Degree"** includes, but is not limited, to any academic credential or designation not less than, but including associate, bachelor, master, doctor, or fellow, whether earned or honorary, which signifies, purports, or is generally taken to signify partial or satisfactory completion of the requirements of an academic, occupational, business, or other program of study beyond the secondary school level.

**"Department"** means the Delaware Department of Education.

“Department Approval” means the process by which a specific institution is recognized by the Department of Education as meeting state standards for approval for such institution.

“Institution” means a post secondary institution or institution of higher education.

“Institution of Higher Education” means a college, university or other post secondary institution authorized to confer degrees. For the purpose of this regulation, post secondary institutions and institutions of higher education shall have the same meaning.

“Middle States” means the Middle States Commission on Higher Education or the standards for accreditation used by Middle States Commission on Higher Education.

“National Accrediting Agency” means a nationally recognized accrediting agency or association that appears on the list published by the U.S. Secretary of Education.

“Post Secondary Education” means a higher level of education or noncompulsory education level following completion of a secondary education, such as high school or secondary school. Post secondary education includes undergraduate and postgraduate education including associates, baccalaureate, masters, or postgraduate degrees. For the context of this regulation, post secondary education does not include vocational or professional training otherwise included and regulated as Private Business and Trade schools and not resulting in a degree.

“Post Secondary Institution or Institution of Post Secondary Education” means an institution of higher education offering post secondary education usually with the intent to confer academic degrees. For the purpose of this regulation, post secondary institutions and institutions of higher education shall have the same meaning.

“Private Business and Trade Schools” has the same meaning as in 14 Del.C. §8501(1).

“Program or Program of Courses” means the specific sequence of courses and experiences required by an institution. Program includes an organized unit of subject matter in which instruction is offered within a given time and for which credit is given toward completion of training toward a predetermined occupational or academic credential.

“Regional Accrediting Agency” means an agency such as the Commission on Higher Education of the Middle States Association of Colleges and Schools or others that appear on the list published as Regional Institutional Accrediting Agencies, by the U.S. Secretary of Education.

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

## **2.0 Procedures for Securing Approval**

2.1 Institutions may be granted one of three levels of recognition: Recognized Applicant, Provisional Approval or Full Approval for five years.

2.1.1 Recognized Applicant: An institution shall complete the questionnaire, Application to Confer Academic and Honorary Degrees. This material, presented in duplicate, is reviewed by an evaluation team mutually acceptable to the institution and the Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution shall be notified of Recognized Applicant status valid for one or more years. Recognized Applicant status may be extended yearly or may be terminated. Recommendations shall be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester. Institutions offering programs of varying duration shall request evaluation for Provisional Approval in a time frame appropriate to the length of the program.

2.1.2 Provisional Approval: Following the on-site visit, required for this second level of approval, the team shall recommend to the Secretary of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

2.1.2.1 An institution receiving Provisional Approval may incorporate under 8 Del.C. §125 with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree,

~~the charter shall be amended to include the degree-granting privilege. The institution shall retain this status until after the first class has been graduated.~~

~~2.1.2.2 An institution shall seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.~~

~~2.1.2.3 If a Provisionally Approved institution does not receive full approval within four years after the first graduating class, the Department of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.~~

~~2.1.2.4 It shall be the responsibility of the Department of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition. The Department of Education shall require that an on-site visit to the Delaware location take place before moving to Final Approval.~~

~~2.1.2.5 For Final Approval an institution must meet the minimum standards that are found in 1.0. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two- or four-year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or college. The standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.~~

~~2.1.3 Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the Department of Education has a representative on the evaluation team, the Department of Education may accept the Regional Approval in lieu of a separate evaluation.~~

~~2.1.3.1 Provisionally Approved and Fully Approved institutions shall keep the Department of Education informed of any changes in the facts as presented in their applications.~~

~~2.2 All expenses incurred by a visiting team at any stage in the approval procedures shall be borne by the institution requesting approval.~~

~~2.3 Proposals or descriptions for graduate programs shall be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.~~

## **2.0 Department Approval is Required prior to an Institution incorporating with the power to confer degrees. Operating or Offering any Courses in Delaware**

~~2.1 Pursuant to 14 Del.C. §121 (a) (16) and 122(b)(3), (8), and 8 Del.C. §125, no corporation or Institution other than those authorized in Title 14, shall without first having received approval from the Department:~~

~~2.1.1 incorporate in Delaware with the power to confer degrees; or~~

~~2.1.2 offer courses, programs of courses, or degrees within Delaware.~~

~~2.2 This regulation shall not apply to Private Business and Trade Schools to the extent they do not offer degrees and are governed by 14 Del.C. Chapter 85.~~

## **4 3.0 Standards for Approval of Post-Secondary Institutions**

~~An institution seeking Department approval shall adopt the following:~~

~~4.3.1 Purposes and Objectives~~

~~4.3.1.1 An institution shall present a well defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement shall include the reasons for the existence of the institution in its particular community. In addition, the purposes shall be reflected in the types of students and sequence of the offerings of the college in general and in specific programs.~~

~~43.1.1.1~~ The An Institution's specific objectives shall be presented in behavioral terms and shall be the basis for future student and program evaluation.

~~1.1.1.2~~ ~~The Department's 14 DE Admin. Code 225 Prohibition of Discrimination that prohibits discrimination on the basis of race, color, creed, national origin, disability, age or gender in programs receiving approval from the Department applies to Degree Granting Institutions of Higher Education approved by the Department of Education.~~

3.1.1.2 All institutions shall adopt the Department's antidiscrimination regulation 14 DE Admin. Code 225.

43.2 Administrative Organization

43.2.1 The organizational pattern of the institution as a two year associate or a four year baccalaureate or graduate or professional institution, or as a single or multipurpose institution, shall be clearly defined and shall be related to the purposes of the institution.

43.2.2 The institution shall present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of trustees), advisory board (if any), the president and the administrative staff, and the faculty.

43.2.3 The functions and responsibilities of the board shall be clearly defined in the Bylaws.

43.2.4 The board shall be moderate in size (between 9 and 25 members) and shall represent different points of view and interests, be selected from persons interested in the institution, willing to give the time necessary for board matters and be appointed or elected for regular or overlapping terms of office. The large majority of the members ~~should~~ shall be other than the salaried administrators of the institution.

43.2.5 There shall be ~~evidence of~~ established channels of communication between the governing board and the administration and faculty.

43.2.6 ~~There shall be evidence that the administrative staff has the~~ The administrative staff shall have the necessary time and assistance to enable members **[of the staff]** to discharge their duties efficiently.

43.2.7 ~~There shall be evidence that the administrative staff is aware of its three major functions;~~ The administrative staff functions shall include selection, supervision and support of faculty; selection and supervision of the students; and operation of the facilities for the benefit of faculty and students. Institutions shall adopt a policy to ensure that the administrative staff is aware of the above three major functions.

43.2.8 There shall be definite policies and procedures concerning academic freedom, tenure, retirement, ~~pensions, pension plans,~~ leaves of absence, sick leave, the determination of rank and promotions, and the professional development of the faculty, administrative officers and professional staff.

43.3 Financial Administration

43.3.1 The institution shall ~~demonstrate~~ have financial resources adequate for the effective accomplishment of its announced purposes. The income shall be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

3.3.1.1 An institution shall have an adequate reserve in unencumbered funds.

3.3.1.2 Financial statements for both beginning and continuing institutions shall contain the following:

3.3.1.2.1 Reflect clearly the sources of income, categories of expenditure, and the profit or nonprofit status of the institution;

3.3.1.2.2 Show the nature and amount of indebtedness, if any; how incurred; and the provision for amortization; and

3.3.1.2.3 A five year financial projection.

3.3.1.3 The institution shall indicate agreement or provide a surety bond for the protection of the contractual rights of students.

3.3.1.4 The institution shall adopt standards for accounting and financial reporting. The structure shall account for federal and state monies, as well as other sources of income and expenditures.

3.3.1.4.1 The institution shall conduct an external independent annual audit on a scheduled basis that shall be reviewed by its governing board.

43.3.2 The business management shall be under the direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

43.3.3 A continuing institution shall present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those

customarily prepared for trustees.

43.3.4 Information shall be available on the annual surplus or deficit at the end of each of the past five fiscal years.

43.3.5 The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the National Association of College and University Business Officers (NACUBO).

#### 43.4 Student Personnel Program

43.4.1 When appropriate, an institution shall ~~provide evidence of~~ have an adequate student personnel program, including student activities and a counseling service and the program shall be directed by a professionally trained person whose responsibilities embrace the general welfare and discipline of the students. Services shall aim to provide counseling, advocacy, intervention, and referral services so that students can resolve problems that might otherwise interfere with the achievement of their educational objectives, including services for personal concerns, academic choices, and career planning.

43.4.2 Provision shall be made in the counseling service for testing of students' abilities and interests as aids to student self understanding, educational planning and career decisions.

43.4.3 Depending on the scope of the institution ~~and whether it is residential or nonresidential in character~~, the student personnel program shall be concerned with the ~~living arrangements~~, and health needs of students, and with the development of a meaningful program of social, recreational, and athletic, education and cultural out of class activities. If the institution is residential, it shall also be concerned with student living arrangements.

#### 43.5 Admission Policies and Procedures

43.5.1 The institution shall have a carefully stated selective admissions policy that is appropriate to the institution's purposes and organization. Admission criteria shall be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution shall operate in compliance with announced admission policies and procedures.

43.5.2 The admissions office shall be adequately staffed to carry out the admissions policies and procedures.

43.5.3 For admission, the institution shall require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test (GED) scores or the College Entrance Examination Board scores. The applicant's file ~~should~~ shall contain a complete transcript of the school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

43.5.4 The institution shall ~~supply evidence such as~~ provide correlations between admission credentials and freshman grades, academic attrition studies and objective test results ~~and others~~, to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution shall admit students in accordance with its published criteria.

43.5.4.1 The institution may, at its discretion employ more flexible and experimental admissions standards but ~~should~~ shall document with supporting information the criteria used to judge these students for admission and evaluate these criteria based on experience.

#### 43.6 Faculty

43.6.1 The number of faculty shall be adequate to support the mission of the institution, to serve the projected number of students ~~at an acceptable ratio~~ and to insure the quality and the integrity of its academic programs. Documentation of faculty qualifications in the form of resumes ~~must~~ shall be available to the Department upon request. The institution shall have clearly defined criteria for faculty appointments, incentives for retention, and provisions for inservice growth and development.

43.6.2 There shall be a well planned incentive program designed for retention of faculty. When applicable, such a program shall include policies on academic freedom, tenure, retirement, ~~pensions~~ pension plans, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There shall be a clear statement of criteria for each rank and the requirements for promotion.

43.6.3 There shall be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

43.6.4 If faculty members serve as advisors, they shall be fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

43.6.5 There shall be ~~evidence that there is~~ a faculty organization to carry out the respective educational responsibilities.

#### 43.7 Program

43.7.1 The number and variety of curricula shall be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution.

43.7.2 Curricula in all fields shall evidence recognition of the relationships between a broad education and the acquisition of techniques and skills. Degree requirements for each curriculum shall be clearly stated.

43.7.3 Transfer and career programs in a junior college shall include a block of courses in liberal education.

3.7.4 Descriptions for graduate programs shall be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

#### 43.8 Graduation Requirements

43.8.1 For authorization to grant an associate degree, an institution shall require 60 semester hours of academic and pre professional work or equivalent, give credit only for courses completed with a passing grade of ~~the~~(D) or its Institutional equivalent and require an average of 2.0 or specify clearly what index is required for graduation.

43.8.2 For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours for graduation and no less than a 2.0 overall average (on a 4.0 scale).

43.8.3 All graduation requirements shall be clearly delineated for any institution.

#### 43.9 Facilities

43.9.1 Administrative and faculty facilities, classrooms, library, laboratories, and student activity centers shall be suitable for their specific purposes, and convenience for advisement and scheduling, and shall promote the highest standards of learning, health and personal welfare. The institution shall comply with applicable state and federal standards, with respect to the accessibility of facilities by persons with disabilities.

43.9.2 Beginning institutions and those planning expansion programs shall have well designed plans for appropriate building expansion.

#### 43.10 Library

43.10.1 The institution shall provide library facilities adequate to the effective realization of its stated objectives. The scope of resources shall follow the current Middle States recommendation ~~that the resources must be in reasonable proportion to the needs to be served, but numbers alone are no assurance of excellence. Most important are quality, accessibility, availability, and delivery of resources on site and elsewhere. The Secretary may allow the institution flexibility from the Middle States recommendation, if the Secretary determines within his or her discretion that the library provides alternative access to resources and will provide adequately for students.~~

43.10.2 In the case of the non Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities shall be imported on a temporary basis or provided through contractual arrangements so that the material available will provide adequate support to the courses offered.

#### 43.11 Outcomes

43.11.1 The institution shall describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

43.11.2 Plans for the measurement of outcomes shall include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

#### 43.12 Catalog and Announcements

43.12.1 The catalogs and all other announcements shall give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons and shall include specifically:

43.12.1.1 Identification data, such as volume number, and date of publication.

43.12.1.2 The Names of the institution, the governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.

43.12.1.3 A complete calendar for the academic year.

	<del>4.3.12.1.4</del>	A statement of its accredited or approval status.
	<del>4.3.12.1.5</del>	A statement of the origin and objectives of the institution.
	<del>4.3.12.1.6</del>	Admission and graduation policies and requirements.
policies.	<del>4.3.12.1.7</del>	<u>A</u> <del>D</del> detailed schedule of all fees and other charges as well as refund
	<del>4.3.12.1.8</del>	Information concerning scholarship funds.
equipment.	<del>4.3.12.1.9</del>	<u>A</u> <del>D</del> escription of location of the institution; buildings, grounds and
	<del>4.3.12.1.10</del>	A <del>L</del> ist of degrees conferred and requirements for each degree.
during period covered by the catalog and an indication of courses offered at other times. Descriptions shall indicate prerequisites, if any.	<del>4.3.12.1.11</del>	<u>An</u> <del>O</del> utline of each curriculum and a description of each course offered
per week.	<del>4.3.12.1.12</del>	<u>The</u> <del>N</del> umber of weeks of instruction per semester and of class meetings
<u>background checks.</u>	<del>3.12.1.13</del>	<u>A policy for the screening of staff including any policy on criminal</u>

**4.0 Levels of Approval**

The Department shall review applications and shall deny or grant approval or may request additional information prior to denial.

4.1 Institutions may be granted one of three levels of approval: Recognized Applicant, Provisional Approval or Full Approval.

4.1.1 Recognized Applicant

Recognized Applicant is the initial level of approval granted by the Department. The status of Recognized Applicant does not carry authorization to confer degrees.

4.1.1.1 An institution shall begin the approval process by completing the Department's application and submitting the completed application and all documentation in duplicate to the Department. The application and supporting material shall be reviewed by the Department or an evaluation team selected by the Department. After the review the Department may require a meeting with the Board of Trustees or the administrative staff of the institution or both. The Department may also require an on site visit.

4.1.1.2 If the Department determines that based on all the facts gained the institution appears to meet, or shows promise of meeting a significant portion of the standards as stated in this regulation, the institution shall be granted Recognized Applicant status.

4.1.1.3 Recognized Applicant status may be valid for one or more years. If the Department determines that the institution continues to meet the requirements of this regulation and is making satisfactory progress towards the next level of recognition, Recognized Applicant status may be extended yearly. If the Department determines that the institution does not continues to meet the requirements of this regulation or is not making satisfactory progress towards the next level of recognition, Recognized Applicant status may be terminated.

4.1.1.3.1 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report with the Department. The Department or the evaluation committee may make an on site visit to the institution in order to verify the contents of the report and evaluate progress to date.

4.1.1.3.2 A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester and a four year institution, no later than the 7th semester. Institutions offering programs of varying duration shall request evaluation for Provisional Approval in a time frame appropriate to the length of the program.

4.1.1.4 The Department or evaluation committee shall make recommendations for any changes in or additions to the information previously submitted that would be necessary for consideration for Provisional Approval.

4.1.1.5 A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

4.1.1.6 If a Recognized Applicant fails to file a progress report, keep the Department informed of changes or request annually renewal of their status as a Recognized Applicant or advancement to

provisional approval, the institution's approval automatically expires one year after approval. If an institution's approval expires, the institution shall be required to begin the application process from the beginning and submit a new application.

#### 4.1.2 Provisional Approval

Provisional Approval is the second level of approval granted by the Department.

4.1.2.1 Following the review of the request for provisional approval, the evaluation committee, if utilized by the Department, shall recommend to the Department and the Department shall determine that either the institution continue to be recognized only as an Recognized Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Recognized Applicant status shall be informed of the changes and improvements necessary to be eligible for Provisional Approval status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval.

4.1.2.2 An institution receiving Provisional Approval may incorporate under 8 Del.C. §125 with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter shall be amended to include the degree granting privilege. The institution shall retain this status until after the first class has been graduated.

4.1.2.3 An institution shall seek Full Approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The Department may require an on site visit prior to conferring recognition of Full Approval.

4.1.2.4 If a Provisionally Approved institution does not receive Full Approval within four years after the first graduating class, the Department may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.

4.1.2.5 The Department shall provide notice to Recognized Applicants and Provisionally Approved institutions of the requirements they must meet in order to achieve the next level of recognition. If an institution has a Delaware location, the Department shall require ~~The Department shall require that an on site visit to the Delaware location before moving to Full Approval.~~

#### 4.1.3 Full Approval

Full Approval is the third level of approval granted by the Department.

4.1.3.1 For Full Approval an institution shall meet the minimum standards that are found in this regulation. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department within its discretion may use as additional criteria the regulations of the appropriate accrediting or approving agency.

4.1.3.2 Fully Approved institutions shall retain such status for a period of no longer than five years. Prior to the expiration of the five (5) year term, the institution shall file a progress report and the Department or evaluation committee shall complete an on site visit. If an institution fails to seek renewal of their Full Approval status their recognition shall expire. After the initial renewal, all Fully Approved institutions shall continue to file for renewal for at least every five years, prior to the expiration of their approval.

4.1.4 If an institution is scheduled for a Regional Accreditation evaluation at the time of either the Full Approval or the five year period review and the Department ~~[of Education]~~ has a representative on the evaluation team, the Department ~~[of Education]~~ may accept the Regional Approval in lieu of a separate evaluation.

4.1.5 All institutions shall keep the Department informed of any changes in the facts as presented in their applications.

4.1.6 All expenses incurred by a visiting team at any stage in the approval or renewal procedures shall be borne by the institution requesting approval.

### ~~3.05.0 Institutions of Higher Education Application Degree Granting Authority Application Process~~

~~35.1 The Applicant Institution shall complete detailed application questionnaires a detailed application on forms approved by the Department and submit data as requested to the Department.~~

~~35.2 The Secretary shall may, if she/he it determines that it would be beneficial, appoint an evaluation committee to advise the Secretary and the Applicant Institution from the time of application through the final approval aid the Department in the evaluation process.~~

~~3.2.4 The committee shall be composed of persons from the Department of Education, the~~

~~University of Delaware and other persons with experience in the field of higher education and shall recommend to the Secretary of Education that the Institution receive status as a Recognized Applicant or deny recognition. The status of Recognized Applicant does not carry authorization to confer degrees.~~

~~3.3 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on site visit to the institution in order to verify the contents of the report and evaluate progress to date.~~

~~35.3.4 A When an evaluation committee is used by the Department, a written report of the committee's action shall be sent to the Secretary of Education Department with a recommendation to withdraw approval, to continue the status of Recognized Applicant along with a listing of any specific recommendations to be met by the institution or to grant new status of Provisional Approval, with the right to confer a degree.~~

~~35.4 At a time one or two years following the graduation of the first class from the institution but not later than three years, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee selected by the Department; the institution shall present a third progress report and the Department or committee shall make an on site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate regional or specialized accrediting agency, it may be recommended to the Secretary ~~[of Education]~~ that a favorable report by this visiting agency be accepted in lieu of a separate report and on site visit from the Department or evaluating committee. The recommendation on this occasion may be for ~~final~~ approval Full Approval of the degree granting authority of the institution. It will be within the Secretary's discretion to determine if the approval by the other [accrediting agency Accrediting Agency] meets the requirements of this regulation and whether to accept the on site visit and favorable report in lieu of any section of this regulation.~~

~~3.5 If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the Department of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.~~

~~3.6 Any costs incidental to the evaluation and approval of an institution shall be the responsibility of that applicant institution.~~

5.5 Right to Hearing

5.5.1 If approval of the institution is denied at any of the three levels of approval, - the institution shall have the right of appeal to the Secretary but in such appeal shall be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.

5.5.2 The Department shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary within twenty (20) calendar days.

5.5.3 Hearings shall be conducted in accordance with the Department's Hearing Procedures and Rules.

**4-0 6.0 Additional Procedures for Approval of Non Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware**

~~4.16.1~~ 4.16.1 Out of state institutions wishing to offer credit bearing courses, programs of courses, or degree programs in Delaware shall make application to the Secretary of Education Department at least one academic year before the requested date of implementation.

~~4.26.2~~ 4.26.2 Final application forms with supporting documents shall be presented to the Secretary of Education Department at least six months prior to the requested date of implementation.

~~4.3 An accreditation agency designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.~~

~~4.4 Even though an institution is regionally accredited, the Department of Education may at any time require the institution to present a complete and documented application for license if complaints directed against the Delaware operation of the institution by Delaware enrollees seem to warrant a more thorough review.~~

6.3 The Institution shall prove that the degree programs conform to the minimum standards established by the Department for similar institutions operating within the State. The Secretary may within his or her discretion, consider if an institution has been regionally accredited and determine if the regional accreditation meets the standards listed in this regulation and may accept that accreditation for part or all of the requirements in

this regulation. However, an ~~accreditation agency~~ Accrediting Agency] designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.

~~4.56.4~~ The Institution shall prove that the proposed site or facility is in compliance with applicable Federal, Delaware and local governmental laws and standards pertaining to zoning, occupancy, accessibility, fire, health and safety.

~~4.6~~ ~~The Institution shall prove that the degree programs conform to the minimum standards established by the Department of Education for similar institutions operating within the State.~~

~~4.76.5~~ The Institution shall guarantee, by resolution of their Board of Trustees, that their operations in the state of Delaware will be financially solvent.

~~4.86.6~~ Programs shall be approved for periods of one to five years but initially programs shall be approved for up to three years. Credit bearing courses, but not degree programs shall be approved for only one year.

~~4.96.7~~ After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Department of Education and usually if deemed necessary by the Secretary within her discretion, with the assistance of a consultant(s) from an institution of higher education with expertise in the program or course offered.

~~4.106.8~~ The institution shall be obligated to keep the ~~Secretary of Education~~ Department informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program or course.

~~4.116.9~~ A license fee of \$250.00 per out of state institution shall be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, shall pay a minimum fee of \$150.00.

~~4.126.10~~ Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.

~~4.136.11~~ Each year the Department of Education shall publish a list of all programs and courses approved to operate in the State of Delaware.

#### 4.146.12 Agents

Every agent representing an institution as herein defined, located outside the state of Delaware whether such institution is located inside the state of Delaware or any other state or in any nation of the world, that contacts persons within the state of Delaware for the purpose of soliciting enrollment in the institution, shall make written application for an agent's permit to the Department on forms prepared and furnished by the Department. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by ~~him/her~~ the applicant, and shall be accompanied by the recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Department and there shall be an annual renewal fee determined by the Department. A separate permit shall be obtained for each school represented by an agent.

~~4.14.46.12.1~~ Each applicant for a permit to serve as an agent shall submit with the application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that ~~he/she~~ the agent will represent.

~~4.14.26.12.2~~ Each agent shall apply for a permit each year at the same time that the institution ~~he/she~~ the agent is to represent makes application for a ~~Certificate of Approval or renewal~~. If the institution is not required to make application for renewal or continuation that year, the agent shall apply for renewal prior to the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

~~4.14.36.12.3~~ The lapse, suspension, revocation or non renewal of the certification of an institution for any cause shall make invalid all agent permits for that institution.

~~4.14.46.12.4~~ The institution shall report the discharge or resignation of any agent ~~shall be reported immediately to the Department of Education within thirty days.~~

~~4.14.56.12.5~~ To the extent that the Department determines any situation warrants it, the Department of Education shall be responsible for publicizing publicize the discontinuance of any certificate or permit.

~~4.14.6~~ In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.

6.12.6 The fee for the agent permit shall be waived for the owner or the chief executive officer of the institution who also serves as its agent. Each individual shall still apply for and obtain an agent permit. Any additional agents must obtain permits as otherwise described.

~~4.15~~ Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations

6.12.7 The fees charged as filling and renewal fees are not refundable.

## **7.0 Violations of the Law**

Violations of the law and regulations relating to Institutions as herein described shall be referred to the Attorney General of the State of Delaware for any action or permitted or required by law.

## **5-0 8.0 Additional Procedures for Approval of Institutions of Higher Education, Located In Other States or Territories and Not Offering Programs In State**

~~5.8.1~~ Pursuant to 8 Del.C. §125, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, all institutions including those located outside of Delaware, and not offering programs in state, shall not incorporate in Delaware with the power to confer degrees without to the Department of Education for approval prior to incorporation. Prior to incorporating in Delaware with the power to confer degrees, an institution shall obtain approval from the Department pursuant to this regulation. A corporation shall provide documentation of official Department approval with any certificate of incorporation filled with the Secretary of State that includes the power to confer academic or honorary degrees.

~~58.1.1~~ With respect to these requests for incorporation, the Department of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the Department's of Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher education incorporated in Delaware.

~~58.1.2~~ The requirements of this regulation shall be the minimum criteria necessary to obtain Department approval. As a matter of comity, the Department of Education will shall not approve the incorporation of colleges, universities or other institutions offering credit bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally or regionally recognized ~~[accrediting agency~~ **Accrediting Agency**] or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as Nationally Recognized Accrediting Associations, by the Secretary of Education. The Secretary may within his or her discretion grant approval of the out of state institution based on the accreditation of a Nationally or Regionally Recognized Accrediting Association if after reviewing the complete application, the Secretary determines that the accreditation meets the minimum standards required in Delaware.

## **6-0 9.0 Notification**

The Department ~~[of Education]~~ shall inform the Presidents of Delaware's public and private institutions of higher education of institutions that have applied to offer programs in the state. This notification shall take place after the applicant institution has completed the initial application and after the Department has reviewed the application, but before an on site visit to the institution has been made.

## **7-0 10.0 Additional Programs After Initial approval**

Institutions shall request approval for programs to be added after the initial approval has been granted.

10.1 An institution shall submit a request for approval of additional program(s) on a Department form

with supporting information and documentation as requested.

10.2 The Department shall review the additional programs based on the information previously submitted by the institution and the mission of the institution.

10.3 The Department shall determine if the additional program(s) meets the requirements of this regulation.

10.4 The additional program(s) may be granted provisional approval for a period of 1-3 years or to the date of the next institutional review if the time period is less than 1-3 years.

### **8-0 11.0 Annual Report**

Institutions shall ~~be required to file Annual Integrated Postsecondary Education Data System (IPEDS) Reports as prescribed by with the Higher Education Commission.~~

### **12.0 Disposition of Student Records**

Prior to discontinuing operation or upon dissolution, all institutions shall comply with the requirements of 14 Del.C. §8530

**5 DE Reg. 859 (10/1/01)**

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 910

## REGULATORY IMPLEMENTING ORDER

### 910 General Educational Development (GED)

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 910 General Educational Development (GED). The amendments clarify the intent of the regulation and as part of the clarification the title has been changed to Delaware General Educational Development (GED) Endorsement. The number assigned to the regulation remains the same.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Friday August 18, 2006, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

The Councils' concerns about the use of the term "regular high school program" has been addressed in 1.2 and 2.4 by using the words "public or non public school program". The grammar in 2.3 and 2.5 has been corrected by using the term 'applicant'. In 2.3 the words "or other comparable and reliable documentation of age" has been added as per the Councils' suggestion. Concerning the differences in passing scores for the 16-17 year olds and the 18 year olds, the practice tests in 1.3 and 2.6 have the same passing scores. The Scores required to receive the GED Endorsement 3.0 are the same for both age groups but the passing score is different from the practice test because it is a different test.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 910 in order to clarify the intent of the regulation and as part of the clarification the title has been changed to Delaware General Educational Development (GED) Endorsement. The number assigned to the regulation remains the same.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code**

910. Therefore, pursuant to 14 **Del.C.** §122 (b) (18), 14 **DE Admin. Code** 910 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 910 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** 910 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 910 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 (b) (18) on October 19, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of October 2006.

#### **DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 19<sup>th</sup> day of October 2006

#### **STATE BOARD OF EDUCATION**

Jean W. Allen, President

Richard M. farmer, Jr., Vice President

Mary B. Graham, Esquire

Gregory A. Hastings

Barbara B. Rutt

Dennis J. Savage

Dr. Claibourne D. Smith

#### **Exhibit B**

#### **~~910 General Educational Development (GED)~~**

~~The Delaware General Educational Development (GED) Endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test.~~

#### **~~1.0 To be Eligible to Take the GED Test an Applicant Shall~~**

~~1.1 Be a resident of Delaware or if a resident of another state work in the state for at least one year.~~

~~1.2 Have withdrawn from a regular high school program.~~

~~1.3 Be 18 years of age or older, or be 16 or 17 years of age and meet the following requirements:~~

~~1.3.1 Be a resident of the State of Delaware.~~

~~1.3.2 Be officially withdrawn from a regular high school program.~~

~~1.3.3 Be at least 16 years of age at the time of application for a waiver.~~

~~1.3.4 Make written application to the Director of Adult Education at the Delaware Department of Education showing good cause for taking the test and designating where the test will be taken.~~

~~1.3.5 Provide verification of withdrawal from high school and a copy of the GED practice scores.~~

~~1.4 Pass the Official GED Practice Test with a score of 2450 or better and not less than 470 on each of the 5 sub-test areas.~~

#### **~~2.0 Required Scores~~**

~~An individual shall have a standard score of not less than 410 on each of the five tests with an average~~

standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED Endorsement. Forty five days must lapse prior to retesting and instruction is recommended before retesting.

~~2-DE-Reg-375 (9/1/98)~~

~~5-DE-Reg-1285 (12/1/04)~~

### **910 Delaware General Educational Development (GED) Endorsement**

The Delaware General Educational Development (GED) Endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test.

#### **1.0 For a person 18 years of age or older to be eligible to take the GED Test an applicant shall:**

1.1 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and

1.2 Certify under his or her signature on the GED application form that he or she ~~officially withdrew from a regular high school program~~ is not enrolled in a public or non public school program]; and

1.3 Provide an official copy of the GED practice test indicating the applicant has passed the Official GED Practice Test with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.

#### **2.0 For a person 16 or 17 years of age to be eligible to take the GED Test an applicant shall:**

2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and

2.2 Be a resident of the State of Delaware; and

2.3 Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, ~~driver's license or a State of Delaware Identification Card; and drivers license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and]~~

2.4 Provide verification of withdrawal from ~~a regular high school program~~ the applicant's public or non public school program]; and

2.5 Provide a transcript ~~of their school work from the their home school~~ from the applicant's public or non public school program]; and

2.6 Provide an official copy of the GED practice test indicating the applicant has passed the Official GED Practice Test with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.

#### **3.0 Scores Required for the Delaware General Educational Development (GED) Endorsement**

An individual shall have a standard score of not less than 410 on each of the five tests with an average standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED Endorsement.

#### **4.0 Retesting**

Forty five days shall lapse prior to retesting and instruction is recommended before retesting.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### REGULATORY IMPLEMENTING ORDER

#### BEFORE DELAWARE HEALTH AND SOCIAL SERVICES

##### In The Matter Of:

Revision of the Regulation of Delaware's Title XXI Delaware Healthy Children Program State Plan 6.2.12 and 6.2.17

##### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XXI Delaware Healthy Children Program (DHCP) State Plan as it relates to dental services. 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 September 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 2, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSED AMENDMENT

##### Statutory Authority

- Legal basis of the State Children's Health Insurance Program (SCHIP): Title XXI of the Social Security Act
- The Code of Federal Regulations (CFR) specifically dealing with the SCHIP: Title 42, Part 457
- 16 Delaware Code, Section 9909
- House Bill #235, 143<sup>rd</sup> General Assembly (signed into State law on July 10, 2006)

##### Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program" by adding a new Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's CHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the **Delaware Code**.

##### Summary of Proposal

This amendment is needed to implement House Bill (HB) #235, 143<sup>rd</sup> General Assembly, which extends the Delaware Healthy Children Program to include dental health services for children enrolled in the program.

Dental services for this population will mirror Title XIX (Medicaid) EPSDT dental services in amount, duration and scope to help ensure continuity of care.

The proposed amendment to the state plan is subject to approval by the Centers for Medicare and Medicaid Services (CMS).

#### SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) endorse the proposed regulation.

**Agency Response:** DMMA appreciates the endorsement.

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the September 2006 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XXI Delaware Healthy Children Program (DHCP) State Plan as it relates to dental services is adopted and shall be final effective November 10, 2006.

Vincent P. Meconi, Secretary, DHSS. 10/12/06

\* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 444 (10 DE Reg. 444). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register* or contact the Division of Medicaid and Medical Assistance for more information.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**REGULATORY IMPLEMENTING ORDER****Revision of the Regulation of the Delaware Prescription Assistance Program DSSM 30501****Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) related to the Delaware Prescription Assistance Program (DPAP). 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 September 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 2, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Amendment****Statutory Authority**

- 16 **Delaware Code**, Ch 30B
- Senate Bill #297, 143<sup>rd</sup> General Assembly (signed into State law on July 6, 2006)

**Background**

The 140th General Assembly amended Title 16, **Delaware Code**, by adding Chapter 30B to enact the Delaware Prescription Drug Payment Assistance Program. The purpose of the act is to provide payment assistance for prescription drugs and certain Medicare Part D costs to low-income seniors and individuals with disabilities who are ineligible for, or do not have, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services. The Delaware Prescription Assistance Program (DPAP) was implemented January 1, 2000, with benefits beginning January 14, 2000.

## Summary of Proposal

DSSM §30501: The proposed amendment would implement Senate Bill (SB) #297, which increases the maximum annual benefit under the Delaware Prescription Assistance program to assist eligible individuals in the purchase of prescription drugs and the payment of certain Medicare Part D costs from \$2,500 to \$3,000.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) endorses this proposed regulation.

**Agency Response:** DMMA appreciates the endorsement.

## Findings of Fact:

The Department finds that the proposed changes as set forth in the September 2006 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) related to the maximum benefit limit of the Delaware Prescription Assistance Program (DPAP) is adopted and shall be final effective November 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 10/12/06

\* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 446 (10 DE Reg. 446). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register* or contact the Division of Medicaid and Medical Assistance for more information.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010(a) (7 Del.C., §6010(a))

**Secretary's Order No. 2006-A-0046**

**Withdrawal of August 1, 2001, Proposed Amendment to Air Pollution Control Regulations, Which Proposed Regulating Volatile Organic Compounds Emissions From Lightering Operations.**

**Date of Issuance: October 16, 2006**

**Effective Date: October 16, 2006**

### 1124 Control of Volatile Organic Compound Emissions (Formerly Reg. No. 24)

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 et seq., 29 Del.C. §§10111 et seq. and 7 Del.C. §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On January 12, 2001, the Department issued a Start Action Notice ("SAN") 2000-23 to amend *Regulations Governing Air Pollution Control* ("Regulations"). The regulatory development process resulted in the Department proposing a new Section 46 to Regulation No. 1124 of the Regulations. This amendment would regulate the air emissions of volatile organic compounds ("VOC") that may be released during lightering operations, which are operations to transfer cargo (normally petroleum products) from larger ships to smaller ships so that the ships may deliver the products to shallower locations along the Delaware Bay. The Department's regulatory development process resulted in the August 1, 2001, publication of a proposed regulation in the *Delaware Register of*

*Regulations.* In addition, the Department held a public hearing on August 30, 2001, and the public comment period remained open until August 31, 2001.

The Department reviewed the extensive public comments on the proposed regulation. Based upon the public comments, the Department decided to revise the proposed regulation. The revision resulted in a complete redrafting of the proposed regulation. The Department's revision will be published November 1, 2006, in the *Delaware Register of Regulations*.

The Department also determines that sound public policy supports withdrawal of the proposed regulation, as published August 1, 2001. Without the withdrawal, there would be two public hearing records and two proposed regulations pending the Department's final decision. The Department determines that only one proposed regulation should be pending final decision, and that the November 1, 2006, proposed regulation is the one that should remain pending as it best reflects the Department's statutory purposes. This Order withdraws the August 1, 2001, proposed regulation, which together with the November 1, 2006, proposed regulation will have only one proposed regulation and public hearing record pending, as opposed to considering two proposed regulations and two public hearing records.

The withdrawal of the August 1, 2001, proposed regulation is because it is no longer applicable as it has been superseded by the November 1, 2006, proposed regulation. The Department took the time to carefully consider the public comments, and developed a better proposed regulation. The record developed on the August 1, 2001, proposed regulation and public hearing now is stale and not relevant to the revised November 1, 2006, proposed regulation. Consequently, it is not appropriate to include the prior proposed regulation's public hearing record as part of the November 1, 2006, proposed regulation to be published in the *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on August 1, 2001, and its associated public hearing record,

The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of a proposed regulation;

The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the August 30, 2001, public hearing, and who requested to receive notice of all actions on a proposed regulation.

John A. Hughes, Secretary

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### DIVISION OF AIR AND WASTE MANAGEMENT

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

**Secretary's Order No.: 2006-A-0045**

#### **Proposed Amendments to Delaware Regulation 1141: "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, Section 1 – Architectural and Industrial Maintenance Coatings" of the State of Delaware "Regulations Governing the Control of Air Pollution"**

**Date of Issuance: October 16, 2006**

**Effective Date of the Amendment: November 11, 2006**

#### **I. Background**

A public hearing was held on October 2, 2006, to receive comment on proposed revisions to the State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards by amending the existing Delaware No. 41 (now Regulation #1141) entitled, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, Section 1 – Architectural and Industrial Maintenance Coatings" of the State of Delaware "Regulations Governing the Control of Air Pollution", under Start Action Notice

(SAN) 2006-08. The proposed amendments concern the specification of a finite period for certain record retention by manufacturers, a revision to certain definitions of products affected by this Regulation, corrections of certain typographical errors contained within the existing Regulation, and the renumbering of the entire regulation to be consistent with the style manual of the Code of Delaware Regulations.

The need for these proposed revisions arose as a result of comments received by the Department from stakeholders after the public hearing held on August 22, 2001, which concerned the original promulgation of Section 1 of Regulation 41. The Department subsequently committed to revise Section 1 of this Regulation at the time of the Environmental Appeals Board hearing held in December of 2002, specifically, to reflect the change in the specialty primer definition to include sealing in efflorescence, as well as to include a record retention period of five (5) years by manufacturers. At both the time preceding the hearing of October 2, 2006, and at the hearing itself, the Department received no public objections or concerns about these proposed amendments, with the exception of an e-mail from Jim Sell of the National Paint and Coatings Association, which expressed full support by the NPCA for these proposed amendments to Regulation No. 41. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated October 12, 2006, and that report, with its attachment, is expressly incorporated herein by reference.

## **II. Findings and Conclusions**

1. Proper notice was provided as required by law.
2. Promulgation of this proposed amendment will specify a finite period for certain record retention by manufacturers, to wit: five (5) years; will revise the definition of a specialty primer, sealer, undercoater product to include sealing in efflorescence; will correct certain typographical errors which presently exist; and will renumber the entire regulation to be consistent with the style manual of the Code of Delaware Regulations.
3. Promulgation of these proposed revisions will made Delaware's record retention period equivalent to that of Maryland and New Jersey, both of which are fellow Ozone Transport Commission (OTC) member states.
4. With the revision to the definition of a "Specialty Primer, Sealer, and Undercoater", Delaware's definition will be equivalent to that of Pennsylvania, also a fellow OTC member state.
5. These revisions, once promulgated, will fulfill DNREC's commitment made previously to reflect the required change to Delaware's specialty primer definition and to include a specific record retention period within this Regulation.

## **III. Order**

In view of the above findings, it is hereby ordered that the proposed amendments to Regulation No. 41, Section No. 1, (hereinafter to be referred to as Regulation No. 1141, Section No. 1) should be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

## **IV. Reasons**

The adoption of these revisions to Regulation 1141, Section No. 1, represents careful and reasoned action by this agency to consider all comments provided by the public with respect to this issue, and has reflected industry concerns within these proposed revisions. Moreover, in development of these revisions, the Department has taken steps to ensure continued safety of the public health and environment, while taking into account industry concerns, and will assist the Department in furtherance of the policy and purposes of 7 **Del. C.**, Ch. 60.

John A. Hughes, Secretary

**\* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 465 (10 DE Reg. 465). Therefore, the final regulation is not being republished. Please refer to the September 2006 issue of the *Register* or contact the Division of Air and Waste Management for more information.**

**DIVISION OF SOIL AND WATER CONSERVATION**

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)  
7 **DE Admin. Code** 5102

**Secretary's Order No. 2006-S-0044**

**Withdrawal of Proposed Regulation and Closure of the Start Action Notice No. 2003-07 Rulemaking Proceeding, Which Proposed to Amend Regulations on Beach Protection and Use of Beaches**

**Date of Issuance: October 12, 2006**  
**Effective Date: October 12, 2006**

**5102 Regulation Governing Beach Protection and the Use of Beaches**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 et seq., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding to terminate the above-referenced proposed rulemaking proceeding.

On May 21, 2003, the Department opened a proposed rulemaking proceeding in a Start Action Notice ("SAN") 2003-07, for the purpose of amending the existing regulations promulgated to implement the Beach Protection Act. 7 **Del.C.** Chapter 68. ("Act"). The rulemaking proceeding was commenced in order to propose changes to the Act's regulations, which have been in effect unchanged since 1983 despite several significant changes to the Act since 1983. The Department's informal rulemaking process included public workshops held on July 1, 2003, July 16, 2003, and March 16, 2005. The Department undertook considerable effort to include public participation in the development of the proposed regulation. The Department concluded its informal process with the November 1, 2005, publication of the proposed regulation in the *Delaware Register of Regulations* and in newspapers of general circulation in Delaware, as required by state law. The public hearing was held in Dover on December 14, 2005, which was continued at Bethany Beach on January 13, 2006.

Since the public hearing, the Delaware General Assembly passed legislation that amended the Act, which Governor Minner signed into law. The Department has determined that the recent amendments to the Act will require the Department to amend its current regulations, and would require the Department to amend the proposed regulations in order to conform to the change in law. The Department could amend the proposed regulation pending in SAN 2003-07, but hereby determines to first withdraw the pending proposed regulations, and terminate the pending proposed rulemaking proceeding commenced by SAN 2003-07. The Department will then commence a new rulemaking proceeding through issuance of a new SAN in the future. The Department's decision to withdraw the pending proposed regulations and to terminate the SAN 2003-07 rulemaking proceeding is based upon concerns that having the new proposed rulemaking proceeding included as part of SAN 2003-07 rulemaking proceeding would confuse the public. The new proposed rulemaking proceeding will be significantly changed as a result of the change in the law, and the Department believes it is better to start over as the nature and extent of the changes needed to comply with the recent change to the Act is best done in a new rulemaking proceeding. The Department's future rulemaking proceeding will be sent or e-mailed to all interested persons, including those who participated in the pending proposed rulemaking proceeding.

The Department is aware of the public's concerns with the public notice of the pending proposed regulation that is being withdrawn by this Order. The Department complied with Delaware law in the public notice procedures, and also undertook considerable efforts to inform the persons who would be likely affected by the proposed regulation. The Department recognizes that many interested persons did not receive notice until the public hearing, and this Order should allow them to receive notice, or they can subscribe to the Department's public notice e-mail service that is available of the Department's web page.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on November 1, 2005;

The Department hereby closes its proposed rulemaking that commenced with Start Action Notice No.2003-07, and the Department shall have this Order published in the *Delaware Register of Regulations* and in

newspapers in the same manner as the notice of the proposed regulation; and

The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

John A. Hughes, Secretary

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3000 Board of Mental Health and Chemical Dependency Professionals**  
Statutory Authority: 24 **Del.C.** §3006(a)(1) 24 **DE Admin. Code** 3000

**ORDER**

The Board of Mental Health and Chemical Dependency Professionals ("Board") was established to protect the general public, specifically those persons who are the direct recipients of services regulated by 24 **Del.C.**, Chapter 30, unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §3006(a)(1) to promulgate regulations to effectuate those objectives.

Pursuant to 24 **Del.C.** §3006(a)(1), the Board proposed to amend its regulation **6.0 Renewal of Licensure**. The changes provide for the online renewal of licenses, including the attestation of completion of continuing education requirements by licensees and the post-renewal random audit of licensees by the Board to check the veracity of attestations. Minor grammatical, typographic, or stylistic changes are also included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed amendments was published in the Delaware *Register of Regulations*, Volume 10, Issue 1 on July 1, 2006. The original notice contained an incorrect description of the proposed regulatory changes, so a corrected notice was published in the Delaware *Register of Regulations*, Volume 10, Issue 2 on August 1, 2006.

Pursuant to such notices, the Board conducted a public hearing on September 27, 2006

**Summary of the Evidence and Information Submitted**

No written or verbal comments were received.

**Findings of Fact**

The Board finds that the online renewal process and the post-renewal auditing of continuing education attestation will improve its ability to carry out its statutory objectives.

**Decision and Effective Date**

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

**Text and Citation**

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

**IT IS SO ORDERED** this 27<sup>th</sup> day of September, 2006 by the Board of Mental Health and Chemical Dependency Professionals of the State of Delaware.

Russel Buskirk, LCDP, President

Dawn Brown, Public Member

Maynard Gregory, LCDP  
 Michael Kriner, LCDP, Vice-President  
 Daniel Cherneski, LMFT  
 Carmetah L. Murray, Public Member, Secretary  
 William Northey, Ph.D., LMFT

John P. Walker, LMFT  
 David M. Ciamaricone, LPCMH  
 Robert L. Doyle III, Public Member  
 Vera Murrell, Public Member  
 James Walsh, Ph.D., LPCMH

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 67 (10 DE Reg. 67). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register* or contact the Board of Mental Health and Chemical Dependency Professionals for more information.

A complete set of the rules and regulations for the Board of Veterinary Medicine are available at:  
<http://www.state.de.us/research/AdminCode/title24/3000%20Board%20of%20Professional%20Counselors%20of%20Mental%20Health.shtml#TopOfPage>

### DIVISION OF PROFESSIONAL REGULATION

## 3000 Board of Mental Health and Chemical Dependency Professionals Statutory Authority: 24 Del.C. §3006(a)(1), 24 DE Admin. Code 3000

### ORDER

The Board of Mental Health and Chemical Dependency Professionals ("Board") was established to protect the general public, specifically those persons who are the direct recipients of services regulated by 24 Del.C., Chapter 30, unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 Del.C. §3006(a)(1) to promulgate regulations to effectuate those objectives.

Pursuant to 24 Del.C. §3006(a)(1), in order to create and accommodate the regulations required by the Delaware General Assembly when adding Licensed Chemical Dependency Professionals (LCDP), Licensed Marriage and Family Therapists (LMFT), and Licensed Associate Marriage and Family Therapists (LAMFT), the Board has adopted the attached amendments to its regulations. The amendments are structural only. Previously existing regulations have been reordered or renumbered to make room within the regulatory structure for the addition of regulations governing LCDP, LMFT, and LAMFT. No substantive changes to the Board's regulations are contained in these amendments.

Pursuant to 29 Del.C. §10113(b)(4), no public hearing or period of public comment is required for non-substantive amendments.

The Board adopted the attached amendments on September 27, 2006

### Summary of the Evidence and Information Submitted

No period of public comment is required for non-substantive changes. 29 Del.C. §10113(b)(4).

### Findings of Fact

**WHEREAS**, the Board of Mental Health and Chemical Dependency Professionals ("Board") is charged by the Delaware General Assembly with creating regulations governing Licensed Chemical Dependency Professionals (LCDP), Licensed Marriage and Family Therapists (LMFT), and Licensed Associate Marriage and Family Therapists (LAMFT);

**WHEREAS**, the Board believes its regulations should be as clear as possible;

**WHEREAS**, the Board believes some reordering or renumbering of its existing regulations is necessary to accommodate the addition of regulations governing LCDP, LMFT, and LAMFT;

**NOW, THEREFORE**, in consideration of these premises, and with the authority in 24 **Del.C.** §3006(a)(1), the Board hereby adopts the attached non-substantive amendments to its regulations.

## Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the Delaware *Register of Regulations*.

## Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A version of the regulations in their final form as amended is attached hereto as Exhibit B. This order is expected to appear in the Delaware *Register of Regulations*, Volume 10, Issue 5, November 1, 2006.

**IT IS SO ORDERED** this 27<sup>th</sup> day of September, 2006 by the Board of Mental Health and Chemical Dependency Professionals of the State of Delaware.

Russel Buskirk, LCDP, President  
Maynard Gregory, LCDP  
Michael Kriner, LCDP, Vice-President  
Daniel Cherneski, LMFT  
Carmetah L. Murray, Public Member, Secretary  
William Northey, Ph.D., LMFT

Dawn Brown, Public Member  
John P. Walker, LMFT  
David M. Ciamaricone, LPCMH  
Robert L. Doyle III, Public Member  
Vera Murrell, Public Member  
James Walsh, Ph.D., LPCMH

## 3000 Board of Mental Health and Chemical Dependency Professionals

### 1.0 Meetings and Elections

1.1 Meetings - Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board.

1.2 Election of Officers - The Board shall elect officers annually at the regular December meeting.  
Statutory authority: 24 ~~Del.C.~~ §3004

### 2.0 ~~Licensure by Certification~~ Licensure by Certification for Professional Counselors of Mental Health (LPCMH)

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

#### 2.1 Licensure by Certification Requirements

2.1.1 Certification - The applicant for licensure by certification shall be certified by the National Board for Certified Counselors, Inc. (NBCC) as a National Certified Counselor (NCC), by the Academy of Clinical Mental Health Counselors (ACMHC) as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.1.1.1 ~~Certifying Organization~~ Certifying organizations acceptable to the Board shall include ~~the National Board for Certified Counselors, Inc. NBCC, Academy of Clinical Mental Health Counselors ACMHC,~~ and other certifying organizations that meet all of the following criteria:

2.1.1.1.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.1.1.1.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.1.1.1.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

# FINAL REGULATIONS

~~2.1.1.1.4~~ The organization shall require the minimum of a master's degree in the a counseling or behavioral science field.

~~2.1.1.2.5~~ Individuals licensed prior to the effective date of this Rule may maintain certification or membership in the certifying organization, acceptable to the Board at the time of their initial licensure in order to qualify for renewal of their license notwithstanding that such certifying organization is no longer deemed acceptable to the Board ~~for failure to meet the criteria of this Rule.~~

~~2.1.2.3~~ Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

~~2.1.4.3~~ Professional Counseling Experience - Professional Counseling experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health clinical counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

~~2.1.4.3.1~~ Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

~~2.1.4.3.2~~ Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

~~2.1.4.3.3~~ Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" and/or the "Verification of Self Employment" form.

~~2.1.5.4~~ Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be defined as follows:

~~2.154.1~~ Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

~~2.154.2~~ Direct Supervision - 1600 hours of direct supervision acceptable to the Board, for purposes of §3008(a)(2) shall mean supervision overseeing the supervisee's application of clinical counseling principles, methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1600 hours of supervision shall consist of face to face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

~~2.154.2.1~~ Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

~~2.154.2.2~~ Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

~~2.154.2.3~~ Supervisory Setting - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

~~2.154.3~~ Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

~~Statutory authority: 24 Del.C., §3008.~~

### ~~3.0~~ 2.2 Licensure by Reciprocity Requirements

~~Applicants for LPCMH licensure by reciprocity (i.e., those requesting licensure based upon active licensure status in another state) shall meet the following requirements:~~

~~3.1~~ 2.2.1 Proof of Licensure Status - The applicant shall hold an active professional

counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

~~3-2~~ 2.2.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

~~3-3~~ 2.2.3 Determination of Substantial Similarity of Licensing Standards- The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the educational, experience and supervision requirements set forth in Title 24, *Delaware Code*, Chapter 30. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

~~3-4~~ 2.2.4 LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the experience requirements of §3008(a)(2), the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of §3008(a)(2). The applicant shall be given full credit for such properly documented experience and/or supervised experience as was required for licensure in his/her licensing state.

~~Statutory authority: 24 Del.C. §§3010.~~

~~6-0~~ 2.3 Renewal of Licensure

~~6-1~~ 2.3.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered years. License renewal may be accomplished online at <http://dpr.delaware.gov>.

~~6-2~~ 2.3.2 Requirements for Renewal are as follows:

~~6-2-1~~ 2.3.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the board. This certification shall be verified by attestation. Attestation shall be completed electronically if the renewal is accomplished online.

~~6-2-2~~ 2.3.2.2 Continuing Education

~~6-2-2-1~~ 2.3.2.2.1 Requirement - The candidate for renewal shall have completed no less than 40 clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

~~6-2-2-2~~ 2.3.2.2.2 Acceptable Continuing Education - Acceptable continuing education shall include the following:

~~6-2-2-2-1~~ 2.3.2.2.2.1 Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter or by a designated official of the sponsoring organization.

~~6-2-2-2-2~~ 2.3.2.2.2.2 Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to 20 clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances may there be less than 20 hours of face-to-face participation in continuing education as outlined above.

~~6-2-2-3~~ 2.3.2.2.3 Make-Up of Disallowed Hours - In the event that the board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

~~6-2-3~~ 2.3.2.3 Hardship. The board shall have the authority to make exceptions to the continuing education requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not necessarily limited to: disability, illness, military service, extended absence from the jurisdiction and exceptional family responsibilities. Request for hardship consideration must be submitted to the board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the board.

~~6-2-4~~ 2.3.2.4 Verification - Verification of continuing education hours shall be by

Attestation shall be completed electronically if the renewal is accomplished online.

~~2.3.2.4.1~~ 2.3.2.4.1 All licensees shall maintain documentation of continuing education during the licensure period to be submitted if their renewal application is selected for audit. Random audits will be performed by the Board to ensure compliance with the continuing education requirement. Licensees selected for the random audit shall submit attendance verification

~~6.2.5~~ ~~2.3.2.5~~ 2.3.2.5 Fees - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division for that licensure renewal period. A 50% late charge shall be imposed upon any fee paid after the renewal date.

~~6.2.6~~ ~~2.3.2.6~~ 2.3.2.6 It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal notices will be sent to the last address on file with the Division.

~~Statutory authority: 24 Del.C. §§3006(a)(5), 3012.~~

~~8.1.2.4~~ 2.4 Return to Active Status - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

~~8.1.1~~ ~~2.4.1~~ 2.4.1 Written Request - Written request to the Board requesting return to active status.

~~8.1.2~~ ~~2.4.2~~ 2.4.2 Certification - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

~~8.1.3~~ ~~2.4.3~~ 2.4.3 Continuing Education - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

~~8.1.4~~ ~~2.4.4~~ 2.4.4 Fee - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

~~Statutory authority: 24 Del.C. §30012(d).~~

**4 DE Reg. 970 (12/1/00)**

**5 DE Reg. 2109 (5/1/02)**

#### **4.0 3.0 Licensure of Associate Counselors of Mental Health (LACMH)**

~~4.1~~ ~~3.1~~ 3.1 Written Plan - The applicant shall submit a written plan for supervised professional experience, on the "Written Plan for Professional Counseling Experience and Supervision" form, supplied by the Board, and signed by the approved professional supervisor.

~~Statutory authority: 24 Del.C. §3009.~~

**4 DE Reg. 970 (12/1/00)**

#### **4.0 Licensure of Chemical Dependency Professionals (LCDP)**

#### **5.0 Licensure of Marriage and Family Therapists (LMFT)**

#### **6.0 Licensure of Associate Marriage and Family Therapists (LAMFT)**

#### **5.0 7.0 Application and Fee, Affidavit and Time Limit**

~~When applying for licensure, the applicant shall complete the following:~~

~~57.1~~ 7.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

~~57.2~~ 7.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming that the following applicant:

~~57.2.1~~ ~~that he/she~~ 7.2.1 ~~that he/she~~ has not violated any rule or regulation set forth by the Delaware Board of Mental Health and Chemical Dependency Professionals;

~~57.2.2~~ ~~that he/she~~ 7.2.2 ~~that he/she~~ has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health ~~or chemical dependency~~ provider,

~~57.2.3~~ ~~that he/she~~ 7.2.3 ~~that he/she~~ does not have any impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a mental health LPCMH or chemical dependency professional LACMH,

~~57.2.4~~ 7.2.4 that he/she has not been convicted of and has no pending criminal charge(s) relating to any crime that is substantially related to the provision of mental health counseling or chemical dependency counseling; and

~~57.2.5~~ that the applicant has not been penalized for any willful violation of any code of ethics or professional mental health or chemical dependency counseling standard counseling standard.

~~57.3~~ Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

~~Statutory authority: 24 Del.C. §§3008, 3009, 3010.~~

**4 DE Reg. 970 (12/01/00)**

**9 DE Reg. 1106 (01/01/06)**

## ~~8.0~~ **Return to Active Status**

### ~~7.0~~ **8.0 Ethics**

~~78.1~~ The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code").

~~78.2~~ The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

~~Statutory authority: 24 Del.C. §§3006(b), 3013.~~

**4 DE Reg. 970 (12/1/00)**

## **9.0 Disciplinary Proceedings and Hearings**

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 **Del.C.** §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C.** Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

~~Statutory authority: 24 Del.C. §§3013 and 3016; 29 Del.C. §§10111, 10122 and 10131.~~

9.2. Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if at least four members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 ~~Del.C.~~ §515.

9.2.6 Any decision by the Board to suspend or revoke a license shall be made public by publishing notice of the suspension or revocation in at least two (2) Delaware newspapers of general circulation. Such publication shall take place following the Board's execution of the final order.

~~Statutory authority: 24 Del.C. §§3004, 3013, 3015, 3016; 29 Del.C. §§10114~~  
**4 DE Reg. 970 (12/1/00)**

## 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 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.

10.2 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.

10.3 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).

10.4 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.

10.5 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 10.8 of this section.

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

10.6.1 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.

10.6.2 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.

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

10.6.4 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.

10.6.5 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.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 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.

10.8 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.

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

10.10 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.

10.11 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.

10.12 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.

## **11.0 Crimes substantially related to the provision of mental health counseling and chemical dependency counseling:**

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the provision of mental health counseling and chemical dependency counseling in the State of Delaware without regard to the place of conviction:

- 11.1.1 Menacing. 11 **Del.C.** §602(a).
- 11.1.2 Aggravated menacing. 11 **Del.C.** §602(b).
- 11.1.3 Reckless endangering in the first degree. 11 **Del.C.** §604
- 11.1.4 Abuse of a pregnant female in the second degree. 11 **Del.C.** §605.
- 11.1.5 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
- 11.1.6 Assault in the third degree. 11 **Del.C.** §611.
- 11.1.7 Assault in the second degree. 11 **Del.C.** §612.
- 11.1.8 Assault in the first degree. 11 **Del.C.** §613.

11.1.9	Abuse of a sports official; felony. 11 <b>Del.C.</b> §614.
11.1.10	Assault by abuse or neglect. 11 <b>Del.C.</b> §615.
11.1.11	Terroristic threatening. 11 <b>Del.C.</b> §621(a) and (b).
11.1.12	Unlawfully administering drugs. 11 <b>Del.C.</b> §625.
11.1.13	Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 <b>Del.C.</b> §626.
11.1.14	Criminally negligent homicide. 11 <b>Del.C.</b> §631.
11.1.15	Manslaughter. 11 <b>Del.C.</b> §632.
11.1.16	Murder by abuse or neglect in the second degree. 11 <b>Del.C.</b> §633.
11.1.17	Murder by abuse or neglect in the first degree. 11 <b>Del.C.</b> §634.
11.1.18	Murder in the second degree. 11 <b>Del.C.</b> §635.
11.1.19	Murder in the first degree. 11 <b>Del.C.</b> §636.
11.1.20	Promoting suicide. 11 <b>Del.C.</b> §645.
11.1.21	Abortion. 11 <b>Del.C.</b> §651.
11.1.22	Self abortion. 11 <b>Del.C.</b> §652.
11.1.23	Issuing abortifacient articles. 11 <b>Del.C.</b> §653.
11.1.24	Sexual harassment. 11 <b>Del.C.</b> §763.
11.1.25	Indecent exposure in the second degree. 11 <b>Del.C.</b> §764.
11.1.26	Indecent exposure in the first degree. 11 <b>Del.C.</b> §765.
11.1.27	Incest. 11 <b>Del.C.</b> §766.
11.1.28	Unlawful sexual contact in the third degree. 11 <b>Del.C.</b> §767.
11.1.29	Unlawful sexual contact in the second degree. 11 <b>Del.C.</b> §768.
11.1.30	Unlawful sexual contact in the first degree. 11 <b>Del.C.</b> §769.
11.1.31	Rape in the fourth degree. 11 <b>Del.C.</b> §770.
11.1.32	Rape in the third degree. 11 <b>Del.C.</b> §771.
11.1.33	Rape in the second degree. 11 <b>Del.C.</b> §772.
11.1.34	Rape in the first degree. 11 <b>Del.C.</b> §773.
11.1.35	Sexual extortion. 11 <b>Del.C.</b> §776.
11.1.36	Bestiality. 11 <b>Del.C.</b> §777.
11.1.37	Continuous sexual abuse of a child. 11 <b>Del.C.</b> §778.
11.1.38	Dangerous crime against a child. 11 <b>Del.C.</b> §779.
11.1.39	Female genital mutilation. 11 <b>Del.C.</b> §780.
11.1.40	Unlawful imprisonment in the second degree. 11 <b>Del.C.</b> §781.
11.1.41	Unlawful imprisonment in the first degree. 11 <b>Del.C.</b> §782.
11.1.42	Kidnapping in the second degree. 11 <b>Del.C.</b> §783.
11.1.43	Kidnapping in the first degree. 11 <b>Del.C.</b> §783A.
11.1.44	Acts constituting coercion. 11 <b>Del.C.</b> §791.
11.1.45	Arson in the third degree. 11 <b>Del.C.</b> §801.
11.1.46	Arson in the second degree. 11 <b>Del.C.</b> §802.
11.1.47	Arson in the first degree. 11 <b>Del.C.</b> §803.
11.1.48	Cross or religious symbol burning. 11 <b>Del.C.</b> §805.
11.1.49	Trespassing with intent to peer or peep into a window of another. 11 <b>Del.C.</b> §820.
11.1.50	Burglary in the third degree. 11 <b>Del.C.</b> §824.
11.1.51	Burglary in the second degree. 11 <b>Del.C.</b> §825.
11.1.52	Burglary in the first degree. 11 <b>Del.C.</b> §826.
11.1.53	Robbery in the second degree. 11 <b>Del.C.</b> §831.
11.1.54	Robbery in the first degree. 11 <b>Del.C.</b> §832.
11.1.55	Carjacking in the second degree. 11 <b>Del.C.</b> §835.
11.1.56	Carjacking in the first degree. 11 <b>Del.C.</b> §836.
11.1.57	Theft; felony. 11 <b>Del.C.</b> §841.
11.1.58	Theft; false pretense. 11 <b>Del.C.</b> §843.
11.1.59	Theft; false promise. 11 <b>Del.C.</b> §844.
11.1.60	Extortion. 11 <b>Del.C.</b> §846.
11.1.61	Misapplication of property. 11 <b>Del.C.</b> §848.

- 11.1.62 Theft of rented property; felony. 11 **Del.C.** §849.
- 11.1.63 Receiving stolen property. 11 **Del.C.** §851
- 11.1.64 Identity theft. 11 **Del.C.** §854.
- 11.1.65 Forgery. 11 **Del.C.** §861.
- 11.1.66 Possession of forgery devices. 11 **Del.C.** §862.
- 11.1.67 Falsifying business records. 11 **Del.C.** §871.
- 11.1.68 Tampering with public records in the second degree. 11 **Del.C.** §873.
- 11.1.69 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 11.1.70 Offering a false instrument for filing. 11 **Del.C.** §877.
- 11.1.71 Issuing a false certificate. 11 **Del.C.** §878.
- 11.1.72 Bribery. 11 **Del.C.** §881.
- 11.1.73 Bribe receiving. 11 **Del.C.** §882.
- 11.1.74 Defrauding secured creditors. 11 **Del.C.** §891.
- 11.1.75 Fraud in insolvency. 11 **Del.C.** §892.
- 11.1.76 Interference with levied-upon property. 11 **Del.C.** §893.
- 11.1.77 Issuing a bad check; felony. 11 **Del.C.** §900.
- 11.1.78 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 11.1.79 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 11.1.80 Criminal impersonation. 11 **Del.C.** §907.
- 11.1.81 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 11.1.82 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 11.1.83 Unlawfully concealing a will. 11 **Del.C.** §908.
- 11.1.84 Securing execution of documents by deception. 11 **Del.C.** §909.
- 11.1.85 Fraudulent conveyance of public lands. 11 **Del.C.** §911.
- 11.1.86 Fraudulent receipt of public lands. 11 **Del.C.** §912.
- 11.1.87 Insurance fraud. 11 **Del.C.** §913.
- 11.1.88 Health care fraud. 11 **Del.C.** §913A.
- 11.1.89 Home improvement fraud. 11 **Del.C.** §916.
- 11.1.90 New home construction fraud. 11 **Del.C.** §917.
- 11.1.91 Misuse of computer system information. 11 **Del.C.** §935.
- 11.1.92 Bigamy. 11 **Del.C.** §1001.
- 11.1.93 Bigamous marriage contracted outside of the State. 11 **Del.C.** §1002.
- 11.1.94 Dealing in children. 11 **Del.C.** §1100.
- 11.1.95 Abandonment of child. 11 **Del.C.** §1101.
- 11.1.96 Endangering the welfare of a child. 11 **Del.C.** §1102.
- 11.1.97 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105.
- 11.1.98 Unlawfully dealing with a child. 11 **Del.C.** §1106.
- 11.1.99 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 11.1.100 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 11.1.101 Possession of child pornography. 11 **Del.C.** §1111.
- 11.1.102 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 11.1.103 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 11.1.104 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 11.1.105 Bribery. 11 **Del.C.** §1201
- 11.1.106 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 11.1.107 Improper influence. 11 **Del.C.** §1207.
- 11.1.108 Perjury in the third degree. 11 **Del.C.** §1221.
- 11.1.109 Perjury in the second degree. 11 **Del.C.** §1353.
- 11.1.110 Perjury in the first degree. 11 **Del.C.** §1223.
- 11.1.111 Making a false written statement. 11 **Del.C.** §1233.
- 11.1.112 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 11.1.113 Hindering prosecution. 11 **Del.C.** §1244.
- 11.1.114 Compounding a crime. 11 **Del.C.** §1246.
- 11.1.115 Abetting the violation of driver's license restrictions; felony. 11 **Del. C.** §1249.

- 11.1.116 Escape after conviction. 11 **Del.C.** §1253.  
 11.1.117 Assault in a detention facility. 11 **Del.C.** §1254.  
 11.1.118 Promoting prison contraband; felony. 11 **Del.C.** §1256.  
 11.1.119 Use of an animal to avoid capture felony. 11 **Del.C.** §1257A.  
 11.1.120 Sexual relations in a detention facility. 11 **Del.C.** §1259.  
 11.1.121 Bribing a witness. 11 **Del.C.** §1261.  
 11.1.122 Bribe receiving by a witness. 11 **Del.C.** §1262.  
 11.1.123 Tampering with a witness. 11 **Del.C.** §1263.  
 11.1.124 Interfering with child witness. 11 **Del.C.** §1263A.  
 11.1.125 Bribing a juror. 11 **Del.C.** §1264.  
 11.1.126 Bribe receiving by a juror. 11 **Del.C.** §1265.  
 11.1.127 Tampering with a juror. 11 **Del.C.** §1266.  
 11.1.128 Misconduct by a juror. 11 **Del.C.** §1267.  
 11.1.129 Tampering with physical evidence. 11 **Del.C.** §1269.  
 11.1.130 Criminal contempt of a domestic violence protective order. 11 **Del.C.** §1271A.  
 11.1.131 Riot. 11 **Del.C.** §1302.  
 11.1.132 Hate crimes. 11 **Del.C.** §1304.  
 11.1.133 Aggravated harassment. 11 **Del.C.** §1312.  
 11.1.134 Stalking. 11 **Del.C.** §1312A.  
 11.1.135 Cruelty to animals; felony. 11 **Del.C.** §1325.  
 11.1.136 Unlawful trade in dog or cat by-products. 11 **Del.C.** §1325A.  
 11.1.137 Animals; fighting and baiting prohibited; felony. 11 **Del.C.** §1326.  
 11.1.138 Maintaining a dangerous animal. 11 **Del.C.** §1327.  
 11.1.139 Abusing a corpse. 11 **Del.C.** §1332.  
 11.1.140 Trading in human remains and associated funerary objects. 11 **Del.C.** §1333.  
 11.1.141 Violation of privacy. 11 **Del.C.** §1335.  
 11.1.142 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.  
 11.1.143 Adulteration. 11 **Del.C.** §1339.  
 11.1.144 Promoting prostitution in the third degree. 11 **Del.C.** §1351.  
 11.1.145 Promoting prostitution in the second degree. 11 **Del.C.** §1352.  
 11.1.146 Promoting prostitution in the first degree. 11 **Del.C.** §1353.  
 11.1.147 Permitting prostitution. 11 **Del.C.** §1355.  
 11.1.148 Obscenity. 11 **Del.C.** §1361.  
 11.1.149 Obscene literature harmful to minors. 11 **Del.C.** §1365.  
 11.1.150 Outdoor motion picture theatres. 11 **Del.C.** §1366.  
 11.1.151 Possessing a destructive weapon. 11 **Del.C.** §1444.  
 11.1.152 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.  
 11.1.153 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.  
 11.1.154 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.  
 11.1.155 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.  
 11.1.156 Receiving a stolen firearm. 11 **Del.C.** §1450.  
 11.1.157 Theft of a firearm. 11 **Del.C.** §1451.  
 11.1.158 Giving a firearm to person prohibited. 11 **Del.C.** §1454.  
 11.1.159 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.  
 11.1.160 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457.  
 11.1.161 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.  
 11.1.162 Organized Crime and Racketeering. 11 **Del.C.** §1504.  
 11.1.163 Victim or Witness Intimidation. 11 **Del.C.** §§3532 & 3533.  
 11.1.164 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).

- 11.1.165 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.**  
 §4751(a), (b) and (c).
- 11.1.166 Unlawful delivery of non controlled substance. 16 **Del.C.** §4752A.
- 11.1.167 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic  
 Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A  
 (a)(1)-(9).
- 11.1.168 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.**  
 §4756(a)(1)-(5) and (b).
- 11.1.169 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 11.1.170 Purchase of drugs from minors. 16 **Del.C.** §4761A
- 11.1.171 Distribution, delivery, or possession of controlled substance within 1,000 feet of  
 school property; penalties; defenses. 16 **Del.C.** §4767
- 11.1.172 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
- 11.1.173 Drug paraphernalia-Manufacture and sale; delivery to a minor; felony. 16 **Del.C.**  
 §§4771 and 4774.
- 11.1.174 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).
- 11.1.175 Obtaining benefit under false representation. 31 **Del.C.** §1003.
- 11.1.176 Reports, statements and documents. 31 **Del.C.** §1004.
- 11.1.177 Kickback schemes and solicitations. 31 **Del.C.** §1005.
- 11.1.178 Conversion of payment. 31 **Del.C.** §1006.
- 11.1.179 Driving a vehicle while under the influence or with a prohibited alcohol content;  
 third and fourth offenses. 21 **Del.C.** §4177 (3) and (4).
- 11.1.180 Duty of driver involved in accident resulting in injury or death to any person;  
 felony. 21 **Del.C.** §4202.
- 11.1.181 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581
- 11.1.182 Prohibition of intimidation [under the Fair Housing Act]; 6 **Del.C.** §4619
- 11.1.183 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A
- 11.1.184 Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C.** §1717
- 11.1.185 Interception of Communications Generally; Divulging Contents of  
 Communications. 11 **Del.C.** §2402.
- 11.1.186 Breaking and Entering, Etc. to Place or Remove Equipment. 11 **Del.C.** §2410.
- 11.1.187 Divulging Contents of Communications. 11 **Del.C.** §2422.
- 11.1.188 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.**  
 §243.
- 11.1.189 Attempt to Intimidate. 11 **Del.C.** §3534.
- 11.1.190 Failure of child-care provider to obtain information required under §8561 or for  
 those providing false information; felony. 11 **Del.C.** §8562.
- 11.1.191 Providing false information when seeking employment in a public school. 6 **Del.C.**  
 §8572.
- 11.1.192 Filing False Claim [under Victims' Compensation Fund]. 11 **Del.C.** §9016.
- 11.1.193 Alteration, Theft or Destruction of Will. 12 **Del.C.** §210.
- 11.1.194 Failure of Physician to file report of abuse of neglect pursuant to 16 **Del.C.** §903.
- 11.1.195 Coercion or intimidation involving health-care decisions and falsification,  
 destruction of a document to create a false impression that measures to prolong life have been authorized; felony.  
 16 **Del.C.** §2513 (b).
- 11.1.196 [Failure to make] Reports of Persons who are Subject to Loss Consciousness. 24  
**Del.C.** §1763.
- 11.1.197 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 **Del.C.** §3913(a),  
 (b) and (c).
- 11.2 Crimes substantially related to provision of mental health counseling and chemical dependency  
 counseling shall be deemed to include any crimes under any federal law, state law, or valid town, city or county  
 ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 1456 (4/1/05)

**DIVISION OF PROFESSIONAL REGULATION****3300 Board of Veterinary Medicine**

Statutory Authority: 24 Delaware Code, Section 3306(a) (24 **Del.C.** §3106(a))  
24 **DE Admin. Code** 3300

**ORDER**

The State Board of Veterinary Medicine ("the Board") held a properly noticed, public hearing on October 10, 2006 to receive comment on proposed additions, revisions, deletions, modifications and reservations to the Board's Regulations. (Attached to this Order as "Exhibit A"). The attendance sheets and transcribed minutes of this hearing are attached to this Order as Exhibit "B" in lieu of a statement of the summary of the evidence. Similarly, one written comment received by the Board and introduced into evidence at the hearing is attached to this Order as Exhibit "C". There was no public comment received at the October 10, 2006 hearing.

Based upon the evidence received, the Board finds the following facts to be supported by the evidence:

1. There was no adverse public comment received concerning the following proposed regulations:

Section 1.0	Supervision
Section 2.0	Unprofessional Conduct for Veterinarians
Section 4.0	Veterinary Premises and Equipment
Section 5.0	Qualifications for Veterinary Licensure by Examination and by Reciprocity
Section 6.0	Character Examination for Veterinarians
Section 7.0	Reciprocity for Veterinarians
Section 8.0	Licensure Renewal
Section 9.0	Continuing Education
Section 11.0	Qualification for Licensure as a Veterinary Technician
Section 12.0	Character of Examination for Veterinary Technician - Veterinary Technician, National Examination
Section 13.0	Reciprocity for Veterinary Technicians
Section 14.0	Continuing Education for Veterinary Technicians
Section 15.0	Unprofessional Conduct for Veterinary Technicians
Section 16.0	Crimes Substantially Related to the Provision of Veterinary Medicine

2. The Board received a request to delete the clause, "no sectioning of tooth and no resectioning of bone," in proposed Regulation 1.6.2. The Board declined to consider the request at this time because deleting this language would be a substantive change in the Regulation.

3. At the hearing, the Board determined to add language to clarify proposed language in Regulation 11.1.3 by adding at the end of the Regulation the words "certified or registered" since the licensing process in some jurisdictions is referred to as certification or registration. Also, to correct an obvious typographical mistake, the beginning of proposed Regulation 12.1 was changed to read "Examination for licensure to practice as a veterinary technician".

**THE LAW**

The State Board of Veterinary Medicine rulemaking authority is provided by 24 **Del.C.** §3306(a)(1) that states:

- (a) The Board of Veterinary Medicine shall have authority to:

- (1) Formulate rules and regulations, with appropriate notice to those affected, where such notice can reasonably be given; all rules and regulations shall be promulgated in accordance with the procedures

specified in the Administrative Procedures Act [Chapter 101 of Title 29] of this State. Each rule or regulation shall implement or clarify a specific section of this chapter.

## DECISION

The Board hereby adopts the Regulations as proposed with any alterations and clarifications noted in this Order, and a copy of the Regulations as adopted is attached to this Order. The Board relies upon its expertise in this area and the evidence presented in any testimony and documents submitted.

It is so Ordered this 10th day of October, 2006.

### STATE BOARD OF VETERINARY MEDICINE

Erin Vicari, President, V.M.D., Professional Member

Kim S. Vincent, Vice-President, Public Member

John T. Gooss, V.M.D., Professional Member

Lena Corder, Public Member

Jeffrey A. Booth, V.M.D., Professional Member

### 3300 Board of Veterinary Medicine

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

#### **11.0 Qualification for Licensure by Examination as a Veterinary Technician (24 Del.C. §3319)**

11.1 The applicant shall file the following documents:

11.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

11.1.2 Official transcript from an AVMA-accredited veterinary technician program or from a foreign veterinary program approved by the AVMA or from completion of acceptable educational and/or experiential alternatives. The following educational and/or experience qualifications shall be considered acceptable alternatives for the purpose of veterinary technician licensure for a period of seven years following the enactment of the Law §3319(a)(1) provided that the Board may shorten this period:

11.1.2.1 a baccalaureate degree in animal science-related field as approved by the Board and 2625 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.2.2 a degree from a veterinary technician program that is not accredited by the American Veterinary Medical Association, as approved by the Board, and 2625 hours of practical experience under the supervision of a licensed veterinarian.

11.1.2.3 a baccalaureate degree in biology, chemistry, psychology, physics, or similar scientific field of study as approved by the Board and 3500 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.2.4 completion of 60 credit hours of coursework at the postsecondary educational level, as approved by the Board, and 5250 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.2.5 or a period of 7000 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed[, certified or registered.]

11.1.4 Veterinary Technician National Examination (VTNE) or its successor.

11.1.5 Check or money order for the license fee. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

11.2 Proof of education shall consist of a transcript sent directly from school to the Board.

11.3 Proof of practical experience shall consist of a notarized letter of endorsement from the supervising veterinarian(s).

11.4 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

11.5 Applications for any licensure submitted by final year veterinary technician students enrolled in an

AVMA-accredited program for the purpose of taking the VTNE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

**12.0 Character of Examination for Veterinary Technicians – Veterinary Technician National Examination (VTNE) (24 Del.C. §3306)**

12.1 Examination for licensure to practice [as a] veterinary [medicine technician] in the State of Delaware shall consist of the Veterinary Technician National Examination (VTNE) or its successor.

12.1.1 The passing score for the VTNE or its successor shall be the score as recommended by the American Association of Veterinary State Boards or its successor.

**\*Please Note:** As the rest of the sections were not amended since the proposal in the September 2006 issue, they are not being published. Please refer to the September 2006 *Register*, page 531 (10 DE Reg. 531) for more information. 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%20Board%20of%20Veterinary%20Medicine.shtml#TopOfPage>

**DIVISION OF PROFESSIONAL REGULATION**

**3900 Board of Clinical Social Work Examiners**

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 Del.C. §3906(a)(1))  
24 DE Admin. Code 3900

**ORDER**

After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on September 18, 2006 at a scheduled meeting of the Delaware Board of Clinical Social Work Examiners to receive comments regarding the proposed changes its rules and regulations to allow for allow for online renewal of licenses and online attestation of completion of continuing education units. The proposed changes also revise the continuing education ("CE") deadline and the license renewal deadline to correspond, so that the required CE's must be completed before January 31 of any odd numbered year, the same date that licenses are renewed. In addition, the revised rules provide that all grants of inactive status expire on a yearly basis on the same date, January 31. Finally, the proposed changes revise Regulation 11.0 to correct a citation, which clarifies the crime the Board found to be substantially related to the practice of clinical social work. Cross-references are also corrected as necessary throughout the rules and regulations. These proposed changes to the Board's rules and regulations affected Regulations 5.0, 6.0, 7.0, 8.0 and 11.0, and were published in the *Register of Regulations*, Vol. 10, Issue 2, August 1, 2006.

The Board's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 26 is set forth in 24 Del.C. §3906(a)(1).

**Summary of the Evidence and Information Submitted**

No written comments were received. One member of the public commented at the hearing as follows.

At the hearing, the Board made one non-substantive change to Regulation 7.2.4. By letter dated July 31, 2006, marked as Board Exhibit 3 at the public hearing, the Board was informed that the Clinical Social Work Federation has been reorganized "to turn the organization into an individual membership entity rather than a primarily bottom up Federation consisting of both individual members and state clinical social work societies." The organization is now known as the Clinical Social Work Association. The letter noted that the "review of continuing education and providing the associated credit will continue as before." As a result of the reorganization, the Association requested that the Board revise the relevant Regulation governing continuing education to change its name from "Clinical Social Work Federation (CSWF)" to "Clinical Social Work Association (CSWA)". The Board determined to make this change to revised Regulation 7.2.4 at the public hearing.

One public comment was made at the hearing related to this issue. Ms. Linnea Goddess testified that the reorganization of the CSWF to the CSWA did not materially change the organization's function and reiterated the purpose of the change as reflected in the correspondence cited above. No other public comments were received at the hearing.

### **Findings of Fact With Respect to the Evidence and Information Submitted**

The Board carefully reviewed and considered the proposed changes to its rules and regulations. The Board has the authority to determine the means and timing of its continuing education audits and the terms during which continuing education must be earned. The Board found that the proposed changes ease the administrative burden of the Board and the Division of Professional Regulation and simplify the process for licensees. Under the new rules, the Board will continue to conduct random audits of licensees to ensure they are in compliance, and it will address continuing education and other deficiencies as appropriate under the circumstances of each individual case. The proposed changes allow licensees to renew their licenses online at any time of day. Although licensees are no longer required to submit continuing education logs to the Division prior to license renewal, licensees must continue to keep the required records of their continuing education credits. This information will be necessary for verification of a licensee's continuing education attestation if he or she is selected for audit.

The Board finds that requiring all inactive licenses to expire on January 31, no matter when they are granted, eases an administrative burden in tracking licensees on inactive status and simplifies the process for licensees. Inactive licenses now all expire on January 31 every year. In odd numbered years, this enables a licensee on inactive status to apply to have his or her status changed to active by using the online renewal process. In other years, the licensee will need to submit the requisite information to the Board as outlined in the changes to Regulation 8.4.

The Board finds that the revision to the legal citation for the crime listed in Regulation 11.1.103 clarifies the crimes that the Board previously found to be substantially related to the practice of clinical social work. The revised rules further clarify that the Board will not "pre-approve" courses or activities for continuing education credit except as provided in Rule 7.2.6.

In summary, the Board finds that the public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to Board Regulations 5.0, 6.0, 7.0, 8.0 and 11.0. The Board received no written comments and one oral comment on the proposed amendments. Pursuant to 24 **Del.C.** §3906 the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. The amendments to these Rules clarify the provisions of 24 **Del.C.** §3907 with regard to renewal of licensure and licensure qualifications. Finally, the revision to Regulation 7.2.4 to recognize the reorganization of the Clinical Social Work Association was not substantive.

### **Decision and Effective Date**

The Board hereby adopts the change to its rules and regulations to be effective 10 days following publication of this Order in the Register of Regulations.

### **Text and Citation**

The text of the rules and regulations remain as published in Register of Regulations, Vol. 10, Issue 2, August 1, 2006, with the exception of the non-substantive change noted above. The revised rules and regulations are attached hereto as Exhibit A.

**SO ORDERED** this \_\_\_\_th day of October, 2006.

### **DELAWARE BOARD CLINICAL SOCIAL WORK EXAMINERS**

Gloria Ho-Ruggiero, LCSW, President  
Timothy J. Toole, LCSW, Vice-President  
Ralph Robinson, LCSW, Secretary  
Robb H. Carter, Public Member  
Winnie Lewis, Public Member

## 3900 Board of Clinical Social Work Examiners

*(Break in Continuity of Sections)***7.0 Continuing Education**

## 7.1 Required Continuing Education Hours:

~~7.1.1 Hours Required.~~ All licensees must complete forty-five (45) hours of continuing education during each biennial license period. ~~For license periods beginning January 1, 2005 and thereafter, documentation, as required by Rule 7.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.~~

7.1.2 At least three (3) of the 45 hours shall consist of courses acceptable to the Board in the area of ethics for mental health professionals.

7.1.3 No licensee shall earn more than ten (10) hours of continuing education credit from self-directed activity. The maximum number of hours granted for a particular type of self-directed activity is set forth below in Rule 7.2.6.4.

7.1.4 Any course or activity submitted for continuing education credit must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

7.1.5 An "hour" for purposes of continuing education shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

7.1.6 Proration. License renewal periods last two complete calendar years, beginning February 1 and ending January 31 of odd-numbered years, for example, beginning February 1, 2007 and ending January 31, 2009. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

7.1.6.1 If the license was granted prior to July 1 of an odd-numbered year, the licensee must complete 35 hours of CE during his or her initial licensing period.

7.1.6.2 If the license was granted between July 1 of an odd-numbered year and January 31 of an even-numbered year, the licensee must complete 25 hours of CE during his or her initial licensing period.

7.1.6.3 If the license was granted between February 1 of an even-numbered year and June 30 of that year, the licensee must complete 15 hours of CE during his or her initial licensing period.

7.1.6.4 If the license was granted between July 1 of an even-numbered year and January 31 of an odd-numbered year, the licensee must complete 5 hours of CE during his or her initial licensing period.

~~License Granted During First Credit Hours~~~~Year Of Licensing Period Required-~~~~January 1—June 30 35 hours~~~~July 1—December 31 25 hours~~~~License Granted During Second Credit Hours~~~~Year Of Licensing Period Required~~~~January 1—June 30 15 hours~~~~July 1—December 31 5 hours~~

~~7.1.37.1.7~~ 7.1.7 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

## 7.2 Definition and Scope of Continuing Education:

7.2.1 Continuing Education is defined to mean acceptable courses offered by colleges and universities, televised and internet courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice,

values, skills and knowledge, ~~as well as including acceptable~~ self-directed activities as described herein.

7.2.2 The following types of courses are NOT acceptable for credit: business, computer, financial, administrative or practice development courses or portions of courses.

7.2.3 The Board will not "pre-approve" courses or activities for continuing education credit, except as provided in Rule 7.2.6 with respect to self-directed activities.

~~7.2.1~~7.2.4 Approved Courses. The Board will accept for continuing education credit all courses designated for clinical social workers which are offered by the Association of Social Work Boards (ASWB), the National Association of Social Work (NASW), the Clinical Social Work **[Federation Association (CSWF) (CSWA)]** and the American Psychological Association (APA) approved providers. ~~Other courses will be evaluated for acceptability at the time they are submitted for license renewal. The Board will no longer "pre-approve" continuing education courses.~~

7.2.5 Other Courses.

~~7.2.5.1 The Board will also accept Acceptable Courses, other than those approved pursuant to Rule 7.2.1.1, shall be courses which:~~

~~7.2.5.1.1~~ increase the licensed clinical social worker's knowledge about skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND

~~7.2.5.1.2~~ are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

~~7.2.1.3~~7.2.5.2 For purposes of this Rule, "Mental and eEmotional dDisorders," "dDevelopmental dDisabilities" and "sSubstance aAbuse" are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

~~7.2.2~~7.2.6 Self-Directed Activities.

~~The Board may, upon request, review and approve credit for self directed activities, to a maximum of 10 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self directed activity in order to assure continuing education credit for the activity.~~

~~7.2.2.1.1 Any self directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self directed activity has ever been previously approved or submitted for credit by the same licensee.~~

~~7.2.6.1 Self Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board, which may include one or more of the following. The Board will accept a maximum of ten (10) continuing education credits for Self-Directed Activities. The maximum number of credits that will be granted for any particular self-directed activity is indicated in Rule 7.2.6.4 below.~~

~~7.2.6.2 To obtain credit for self-directed activity upon renewal of licensure, licensees shall retain. The Board shall require documentation of each activity as noted in Rule 7.2.6.4 below:~~

~~7.2.6.3 Pre-approval for self-directed activity.~~

~~7.2.6.3.1 Licensees may, but are not required to, seek approval of continuing education credit for self-directed activity PRIOR to undertaking the activity IF they submit the following information to the Board by at least two business days prior to a Board meeting preceding the activity. A written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.~~

~~7.2.6.4 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board, which may include one or more of the following:~~

~~7.2.2.1.1~~7.2.6.4.1 Publication of a professional clinical social work-related book, or initial preparation/presentation of a clinical social work-related college or university course (maximum of 10 hours).; Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.

# FINAL REGULATIONS

~~7.2.2.1.1.4 Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.~~

~~7.2.2.1.27.2.6.4.2 Publication of a professional clinical social work-related article or chapter of a book (maximum of 5 hours); Required documentation shall be a reprint of the publication(s).~~

~~7.2.2.1.3 Required documentation shall be reprint of publication(s).~~

~~7.2.2.1.37.2.6.4.3 Initial preparation/presentation of a professional clinical social work-related continuing education course/program (maximum of 2 hours, in addition to number of hours actually attended at the course/program) (Will only be accepted one time for any specific program). Required documentation shall be an outline, syllabus, agenda and objectives for the course, and verification that the course was presented;~~

~~7.2.2.1.4.1 Required documentation shall be outline, syllabus agenda and objectives for course and verification that the course was presented.~~

~~7.2.2.1.47.2.6.4.4 One year of field instruction of graduate students in a Council on Social Work Education-accredited school program, in a clinical setting (maximum of 2 hours). Required documentation shall be a letter of verification from the school for social work.;~~

~~7.2.2.1.5.1 Required documentation shall be a letter of verification from school of social work.~~

~~7.2.2.1.57.2.6.4.5 Participation in formal clinical staffingsstaffing at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals (maximum of 5 hours). Required documentation shall be a signed statement from the agency, school system, facility or hospital, from a supervisor other than the licensee, including date and length of staffing.;~~

~~7.2.2.1.5.2 Required documentation shall be a signed statement from the agency, school system, facility or hospital, from a supervisor other than the licensee, including date and length of staffing.~~

~~7.2.3 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.~~

~~7.2.4 An "hour" for purposes of continuing education credit shall mean 50 (fifty) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.~~

### ~~7.3 Continuing Education Hourly Requirements:~~

~~During each biennial licensing period, licensees shall complete a minimum of forty five (45) hours of continuing education. At least three (3) of the 45 hours shall consist of courses acceptable to the Board in the area of ethics for mental health professionals.~~

### ~~7.47.3 Continuing Education Reporting and Documentation~~

~~7.3.1 Continuing Education Reporting Periods. Licenses are valid for 2 year periods ending, renewing on January 31 of odd numbered years (e.g. January 31, 2005, 2007). Continuing education (CE) reporting periods run concurrently with the biennial licensing period. In the transition period, CE earned between November 1, 2006 and January 31, 2007 may be counted toward the required CE for the licensing period ending January 31, 2007 or the licensing period ending January 31, 2009, but not both, from November 1 to October 31 of the preceding two even numbered years. Beginning with the January 2005 license renewal, all required continuing education shall be completed within the previous two year November to October period (e.g. between November 1, 2002 and October 31, 2004 for January 2005 renewal). The Board shall continue to have the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to 24 Del.C. §3912 and Rule 7.1.77.1.3.~~

~~7.3.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 7.0.~~

~~7.3.2.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.~~

~~7.3.2.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.3.3.3.~~

~~7.3.3 Random audits will be performed by the Board to ensure compliance with the CEU requirements.~~

~~7.3.3.1 The Board will notify licensees within sixty (60) days after January 31 that they have been selected for audit.~~

7.3.3.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

7.3.3.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Rule 7.0, which may include, but is not limited to, the following information:

<u>7.3.3.3.1</u>	<u>Proof of attendance:</u>
<u>7.3.3.3.2</u>	<u>Date of CE course:</u>
<u>7.3.3.3.3</u>	<u>Title of CE course:</u>
<u>7.3.3.3.4</u>	<u>Course agenda, brochure, outline or syllabus:</u>
<u>7.3.3.3.5</u>	<u>Instructor of CE course:</u>
<u>7.3.3.3.6</u>	<u>Sponsor of CE course:</u>
<u>7.3.3.3.7</u>	<u>Proof of clinical content; and</u>
<u>7.3.3.3.8</u>	<u>Number of hours of CE course.</u>

~~7.4.2 In order to assure receipt of continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31<sup>st</sup> preceding the start of the next biennial licensing period.~~

~~7.4.3 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended and identifying the date and location of the course.~~

~~7.4.4 Prior to the end of each renewal period, the Board shall conduct a random audit of licensees to verify compliance with continuing education for that renewal period. Upon request from the Board, an audited licensee will be required to submit, in addition to the documents noted above, copies of agenda, outline and brochure, for each course submitted for credit. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation to verify CE compliance.~~

~~7.4.5 In addition to licensees selected for random audit, the Board also may request additional supporting documentation from any licensee whose renewal materials, as required by Rules 7.4.2 and 7.4.3, raise questions as to the completion or acceptable content of the course(s).~~

- 2 DE Reg 775 (11/1/98)
- 2 DE Reg 1680 (6/1/00)
- 4 DE Reg 1815 (5/1/01)
- 7 DE Reg 1667 (6/1/04)
- 8 DE Reg 880 (12/1/04)
- 8 DE Reg 265 (8/1/05)

**\*Please Note: As the rest of the sections were not amended since the proposal in the August 2006 issue, they are not being published. Please refer to the August 2006 *Register*, page 323 (10 DE Reg. 323) for more information. A complete set of the rules and regulations for the Board of Clinical Social Work Examiners is available at:**

**[http://www.state.de.us/research/AdminCode/title24/  
3900%20Board%20of%20Clinical%20Social%20Work%20Examiners.shtml](http://www.state.de.us/research/AdminCode/title24/3900%20Board%20of%20Clinical%20Social%20Work%20Examiners.shtml)**

**DEPARTMENT OF TRANSPORTATION**  
**DIVISION OF PLANNING**

Statutory Authority: 17 Delaware Code Section 507; Chapters 1 and 5  
(17 Del.C. §507, Chps. 1 and 5)

**Secretary's Order No.:****Development Related Improvements Requiring New Rights-of-Way****I. Background**

A public workshop was held on March 23, 2006 at the Delaware Department of Transportation Administration Building, 800 Bay Road, in Dover, Delaware to receive public comment on a new regulation, Development Related Improvements Requiring New Rights-of-Way, as required by Senate Bill 284. The purpose of this regulation is to prescribe procedures relating to the need for local transportation improvements required to be made when new development has been approved by local government pursuant to 17 Del.C. Chapter 5. This regulation establishes the rules and regulations, under appropriately defined conditions, when and where DelDOT will use its powers to obtain necessary rights-of-way for improvements resulting from a combination of pre-existing traffic conditions and proposed new development. These regulations are promulgated under authority of 17 Del.C. Chapter 5.

Responses to the public's questions are summarized in a Table of Comments, which follows and incorporated into this Order. Proper notice of the public workshop was provided as required by law.

**Comments from Toll Brothers, Inc.,** (items 1, 2, 3, and 4 below), regarding *Development Related Improvements Requiring New Rights-of-Way*:

1. Under the Proposed Regulations, even if the project meets the eligibility requirements for DelDOT's acquisition of right-of-way, DelDOT would have the unfettered discretion to refuse to acquire the necessary right-of-way. There are no criteria governing or limiting DelDOT's ability to refuse an application, and there is no appeal process built into the regulations which would give the developer any rights in this regard. This would allow for non-reviewable arbitrary action on the part of DelDOT and would violate developers' procedural and substantive due process rights. Toll believes that there should be some objective standards employed by DelDOT in reviewing applications for right-of-way acquisition, and that all such decisions by DelDOT be subject to the statutory appeal process.

**Agency Response:** The proposed regulations provide DelDOT with the authority to acquire right-of-way under certain circumstances and for the public good. They are intended to complement existing authority. There is no requirement that these regulations be used, thus, there is no legal issue.

2. Under the Proposed Regulations DelDOT also has the ability to "defer" an application for right-of-way acquisition in cases where a project is located in an active transportation study area, or in an area where a study is about to be initiated, where the results could have a significant impact on or eliminate the need for the improvement proposed by the developer. While this makes sense, there is no timeframe established, and DelDOT would be able to indefinitely "defer" its decision on a particular project. Again, this would result in a violation of developers' procedural and substantive due process rights.

**Agency Response:** The proposed regulations provide DelDOT with the authority to acquire right-of-way under certain circumstances and for the public good. They are intended to complement existing authority. There is no requirement that these regulations be used, thus, there is no legal issue.

3. Under the Proposed Regulations, as drafted, a project is only eligible for Alternative One if it is not in DelDOT's CTP. An improvement project that is in DelDOT's CTP but has not yet been designed would not be eligible for either Alternative One or Two. There is no reason for DelDOT to exclude from the right-of-way acquisition program those improvement projects that are in DelDOT's CTP but have not yet been designed.

**Agency Response:** DelDOT agrees there may be a need for clarification. DelDOT will modify

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Alternative One to specify that it may be used when a project is in the CTP, but not yet under design.

4. In order to be eligible for the right-of-way acquisition program the need for the particular transportation improvement project must have been documented "and confirmed" during the land use process prior to the developer receiving preliminary plan approval from the local land use agency. The draft regulation does not indicate who must "confirm" the need for the improvement project. Is it DeIDOT? Is it the local agency? At least in New Castle County, unless a Traffic Impact Study is required DeIDOT has very little involvement in the exploratory and preliminary plan approval process. If it is DeIDOT that must "confirm" the need for the transportation project before the developer is able to submit an application to DeIDOT for right-of-way acquisition, how is DeIDOT's involvement to be accomplished?

**Agency Response:** DeIDOT confirms the need for the transportation improvement project and will make that determination as part of consultation with local government (prior to project approval) as part of the development review process.

**Comments from Abbott Law Firm,** (items 5 through 12 below), regarding *Development Related Improvements Requiring New Rights-of-Way*:

5. *Chapter 1 - Purpose.* This section contains a fatally flawed provision in the third sentence of the fourth paragraph. Specifically, the sentence states that "DeIDOT retains the discretionary authority to use the provisions of Section 507 and its implementing regulations, or decide not to make use of this authority in a given instance." This provision cannot possibly withstand judicial scrutiny on the grounds that it grants totally unbridled discretion to DeIDOT to decide when, if ever, it wishes to allow someone to take advantage of §507. In addition, this overbroad grant of discretion is not permitted by §507.

In effect, this one sentence renders the entirety of the remaining portion of the Regulations mere surplusage. Indeed, DeIDOT could deny permission to utilize its eminent domain authority to any person or entity for any reason, or no reason at all, even if the applicant met all of the requirements of the Regulations. This is the very essence of arbitrary and capricious government decision making, and must be deleted in order to insure that the Regulations are not void in their entirety. Instead, DeIDOT must set forth objective standards and provide that any person who satisfies the standards is eligible to participate in the program.

**Agency Response:** The proposed regulations provide DeIDOT with the authority to acquire right-of-way under certain circumstances and for the public good. They are intended to complement existing authority. There is no requirement that these regulations be used, thus, there is no legal issue.

DeIDOT has provided eligibility standards.

6. *The last paragraph of section 3.1.* The first sentence appears to reasonably and wisely authorize DeIDOT to deny a developer the right to use eminent domain authority where it would cause substantial harm to an abutting property owner. A good example of this is when DeIDOT did the developer's bidding for it in order to provide it with a big bonus/free road improvements at the taxpayers' expense at the Camden Town Center (i.e. Route 13, Lochmeath Way and WalMart Drive). But the Regulations provide DeIDOT with unbridled discretion to overlook such a substantial detriment to an abutting property owner for any reason, or no reason at all. Once again, such discretion is overbroad, not permitted by §507, and would be struck down by a Court as being clearly arbitrary and capricious. Instead, the Regulations should provide that if substantial impact is caused to abutting or nearby property owners, then DeIDOT shall deny application for use of its eminent domain authority.

**Agency Response:** DeIDOT respectfully disagrees. If substantial impact on adjacent property occurs, then DeIDOT must consider that impact in making decisions and mitigate the impact under some of those decisions.

7. *Section 3.3 on Public Input Process.* A sentence should be added to the final paragraph which also requires that a sign 4' x 4' in size be placed on the closest right-of-way to the lands where the development project is proposed advertising the public meeting.

This is the necessary third leg of the public notice requirements, which will nicely supplement the direct notification and notice by advertisement provisions contained in the draft Regulations.

**Agency Response:** DeIDOT respectfully declines to accept your suggestion. The current process works well and does not create additional sign clutter.

8. *Section 3.4 on "Review Process"* DeIDOT should not require an applicant to submit all final plans necessary to receive approval at the beginning of the process. This is obviously very extensive and risky for the developer. Instead, DeIDOT should only require a conceptual plan sufficient to inform the public and permit review of the proposed exercise of DeIDOT's power of eminent domain. The specific plans referred to in §3.4 should not be required until DeIDOT has approved the developer's use of DeIDOT's power of eminent domain for the project.

**Agency Response:** DeIDOT submits that an applicant has the opportunity to receive comments at the conceptual stage by participating in the PLUS process administered by the Office of State Planning Coordination. The level of plan detail required by DeIDOT must be sufficient to determine the right-of-way needed.

9. *Section 3.5 on "Real Estate Process"* Nothing in §507 permits DeIDOT to avoid having to comply with the requirements of the Delaware Real Property Acquisition Act, 29 **Del.C.** Ch. 95. Therefore, it would seem to make sense to save a whole lot of space in the Regulations by simply incorporating those provisions by reference along with DeIDOT's Real Estate Manual, which is codified in the Delaware Code of Regulations. It appears that the provisions of Section 3.5 attempt to limit the level of compliance with those statutory and regulatory obligations on DeIDOT's part, which is not legally permissible.

**Agency Response:** The real estate process section was included for convenience. It is consistent with the Real Estate Manual.

10. *The last paragraph of the proposed Regulations:* This paragraph seems hopelessly out of place under the §3.6 heading of "Design and Construction Administration." It appears to be a more general statement which is duplicative of the provisions contained at the beginning of the Regulations. Therefore, it should be eliminated for purposes of clarity.

**Agency Response:** DeIDOT agrees it is redundant and should be deleted.

11. *Concerns About Constitutionality Of Law And Regulations:* I wanted to note my concern about the constitutionality of the enabling statute, 17 **Del.C.** §507. First, the General Assembly is not generally permitted to delegate its authority to private persons, which is the effect of the statutory permission to permit private developers to utilize DeIDOT's power of eminent domain in order to advance their private projects. Second, the power of eminent domain may only be utilized for public projects. In many instances, the installation of road improvements to accommodate a private development project has only secondary public benefits. Section 507 may cross that fine line between public and private benefit.

To the extent that "public" road improvements are already planned, but are only being advanced by the developer's earlier construction of them, the use of this authority may be appropriate. I do believe, however, that DeIDOT already has the authority under those circumstances to exercise the power of eminent domain irrespective of §507 and any Regulations promulgated pursuant thereto. The problem arises with the potential to create a "tail wagging dog" situation, where developers who have the most political influence will be able to build projects despite the possibility that the location of their proposed development is simply not appropriate from a planning perspective, while those developers without the right political connections will be left out despite the fact that their project may be a perfectly logical location for the proposed development.

**Agency Response:** DeIDOT is charged with making the determination of whether an action under this proposed regulation is in the public interest and has public benefit. There is an inherent risk, but that risk is dependent on the facts in each particular case. DeIDOT intends to review those facts carefully and deliberately.

12. *Impermissible extension of the program to "rezonings"* Title 17, §507 only authorizes DeIDOT to adopt Regulations which would permit the use of its power of eminent domain by developers proposing land development projects. It does not authorize the use of eminent domain power in the context of a rezoning application. Despite that fact, the Regulations assert in the "Background" section that the ability to use DeIDOT's eminent domain authority would apply to developers proposing real estate rezoning applications in municipalities and counties.

Proof of the limitation on DeIDOT's regulatory authority is contained first in the "Legislative Findings" provision under §507(a), which references Chapter 1 and 5 of Title 17. Chapter 1, §131(i) refers to DeIDOT's review of subdivision proposals. And Chapter 5, §508 refers to the dedication of new roads for State maintenance in the land development plan design and implementation process. Indeed, §507(a) expressly talks about development proposals, and not rezonings of land. So to does §507(b). Consequently, the Regulations

should be modified so that they make it clear that the authority to use DeIDOT's power of eminent domain can only be provided to a developer in the context of a land development project, and not with respect to a rezoning proposal.

**Agency Response:** DeIDOT respectfully disagrees. DeIDOT has the authority to use these regulations in cases where development applications involve rezoning.

**Comments from Century Engineering,** (items 13 through 27 below), regarding *Development Related Improvements Requiring New Rights-of-Way*:

13. *3.0 Regulatory Procedures, Add words shown in italics below:*

Alternative One:... "assume direct responsibility for the planning, design, construction, and inspection of off-site improvements and the total cost of the rights of way acquisition."

Alternative Two:... "assume responsibility for scheduling, planning, design, rights of way acquisition, construction"...

**Agency Response:** Will incorporate for clarification. DeIDOT will incorporate the suggested language for clarification.

14. *3.2 Plan Preparation, Add new first paragraph as follows: After the project is approved by DeIDOT, DeIDOT will assign a State project number and title, and issue a written notice to proceed. The State project number and title will be clearly identified on all future plans, correspondence and documents.*

**Agency Response:** Agreed. Will clarify to read "After the project is accepted by DeIDOT, ..."

15. *Former second (new third) paragraph, rewrite portion of second sentence as follows:*

"verified through deed research, examination of recorded plot plans, and DeIDOT's highway, bridge and subdivision plan archives."

**Agency Response:** DeIDOT agrees and will clarify.

16. *3.4 Review Process. Fourth paragraph, rewrite portion of first sentence as follows:*

"Existing deeds, recorded plot plans shall be acquired and applicable DeIDOT highway, bridge and subdivision plans shall be obtained from DeIDOT archives to establish and verify" ...

**Agency Response:** Will incorporate for clarification.

17. *3.5 Real Estate Process First paragraph, add new third sentence...*

"DeIDOT's Real Estate Section, or a qualified entity, with prior approved by DeIDOT, shall procure the necessary rights of way."

**Agency Response:** Will incorporate for clarification.

18. *Second paragraph, rewrite portion of first sentence as follows:*

"... or if the valuation waiver method can be used".

**Agency Response:** Will incorporate for clarification.

19. *3.5.2 Valuation: Add new third sentence shown in italics*

.... "If the offer of just compensation is estimated to be less than \$25, 000, DeIDOT may authorize the use of one of two (2) appraisal waiver valuation methods and the offer to purchase may be made in the form of an Administrative Offer Summary (AOS). "

**Agency Response:** Language will be clarified to read "If the offer of just compensation is estimated to be less than \$10,000, DeIDOT may authorize the use of one of two (2) appraisal waiver valuation methods and the offer to purchase may be made in the form of an Administrative Offer Summary (AOS). "If the offer of just compensation is estimated to be more than \$10,000, but less than \$25,000, DeIDOT may authorize the use of one of two (2) appraisal waiver valuation methods and the offer to purchase may be made in the form of an Administrative Offer Summary (AOS) with the consent of the property owner."

20. *3.5.4 Acquisition: Rewrite portion of first sentence as follows*

... "A deed or easement of conveyance"

**Agency Response:** Will incorporate for clarification.

21. *Add second paragraph as follows*

... "If DeIDOT uses its power of eminent domain to obtain required right of way; DeIDOT and DeIDOT's legal counsel will assume responsibility for pursuing the legal action and the developer will deposit an amount equal to two (2) times the original offer of just compensation, plus estimated attorney's fees with DeIDOT. The deposit will be held by DeIDOT in a non-interest bearing account. The deposit will be disbursed by DeIDOT in the following manner, 1) the original amount of just compensation will be deposited with the Court when with the original complaint is filed, 2) the remainder will be disbursed in accordance with a court order, with any excess returned to the developer, 3) attorney's fees will be disbursed as invoices are submitted

**Agency Response:** Will incorporate with the following clarification "developer will deposit an amount equal to the property owner's estimate of valuation, plus estimated attorney's fees...."

22. *3.5.5 Right of Way Certification: Add new subsection as follows:*

"Before the project is advertised for construction, DeIDOT will review the project right of way acquisition files to verify and insure that the required procedure(s) has been met. If approved, DeIDOT shall prepare and issue a Right of Way Certification."

**Agency Response:** DeIDOT shall prepare and issue a letter certifying the Right of Way has been approved. DeIDOT will not be issuing formal Certifications.

23. *3.6.1 Alternative One, Delete third paragraph and replace as follows*

"The developer will be required to enter into an agreement with an engineering firm that is certified by the DeIDOT Consultant Control Committee to perform construction inspection and engineering. The engineering firm and the assignment of personnel shall be subject to approval by DeIDOT. Division of Transportation Solutions will coordinate inspection."

**Agency Response:** DeIDOT respectfully disagrees. The terms are "registered" not "certified" and "Committee" not "Coordinator."

24. *Figure 6-2, under Inspection for Level III:*

"The developer will be required to enter into a construction inspection agreement with an inspection engineering firm ~~currently under contract with DeIDOT~~, certified by the DeIDOT Consultant Control Committee to perform construction inspection and engineering. The engineering firm and the assignment of personnel shall be subject to approval by DeIDOT Division of Transportation Solutions will coordinate inspection.

**Agency Response:** DeIDOT respectfully disagrees. The terms are "registered" not "certified" and "Committee" not "Coordinator."

25. *Section 6.6.3 Inspection and Acceptance*

## 1. Project Assignment of Personnel

Project staff shall be adequate in number, with appropriate qualifications to control the work in a manner consistent with sound engineering and construction practices. The developer shall submit the qualifications of the inspection personnel and the level of staffing to DeIDOT for approval. A project supervisor...

## 6. As-Built Plans

For the preparation of as-built plans, the inspecting engineering firm shall retain one set of record prints of the construction plans. These shall be kept up-to-date by the substitution of revised plan sheets add a comma, by marks for minor changes that have been made, and by notes from the inspector's diary.... As-built plans shall be prepared in accordance with DeIDOT's approved procedures and will be required as part of the final acceptance of the off site improvements. Will incorporate for clarification.

**Agency Response:** Will incorporate for clarification.

26. *6.7 Construction Responsibilities*

4. In the event that utilities, poles, lights, signs, traffic signals, or other appurtenances need to be moved for an approved entrance or other off site roadway improvements, the applicant shall pay all costs involved in the relocation. The applicant shall resolve with the affected utility or other owner of such appurtenances any required utility relocation, the time of moving and the required reimbursement.

**Agency Response:** Will incorporate for clarification.

27. *Section 6.7.2 Work Hour Restrictions*

The developer may proceed with extended work hours if it secures approval from a majority of the residents of the affected neighborhood. The limits of the affected neighborhood shall be approved by DelDOT.

**Agency Response:** Will incorporate for clarification.

## II. Findings and Conclusions

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each comment, as reflected in the Table of Comments. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

## III. Order

In view of the above findings, it is hereby ordered that Delaware's Development Related Improvements Requiring New Rights-of-Way Regulation, as required by Senate Bill 284, be promulgated in final form in the customary manner and established rule making procedure required by law.

## IV. Reasons

The development of these new regulations will provide a significant transportation safety and efficiency benefit for the current and future citizens of the State of Delaware. Additionally, this rule making represents careful, deliberate and reasoned action by this agency to address transportation issues affecting Delaware. In developing these regulations, the Department has balanced the transportation need for the State of Delaware to promulgate regulations concerning this matter with the important interests and wide range of public concerns, in furtherance of the policy and purposes of 17 **Del.C.** Chapter 5.

Carolann Wicks, Secretary

Date of Issuance: October 5, 2006

Effective Date of the Amendment: November 11, 2006

### Development Related Improvements Requiring New Rights-of-way

#### BACKGROUND

Developers proposing ~~real estate rezoning or subdivision~~ rezoning, subdivision or land development] applications in Delaware municipalities and counties are required to improve the local transportation system that serves the property if their proposed development triggers the need for the improvement. Many developers are able to make the necessary improvements, while others are hindered by their inability to secure the necessary road right-of-way. Often, prior development along the roadway has already absorbed the capacity created when the road was first built and the surrounding landowners may not feel that there is any benefit in selling the needed right-of-way to enable the next round of development. Prior to these regulations, state law did not authorize acquisition of rights-of way necessary for development-related improvements.

Fundamentally these road improvements are for the public good, as the general public will receive the travel benefits. The need for improvements is most often triggered by new development in combination with pre-existing traffic growth patterns in the area. DelDOT's plan for making roadway improvements is outlined in its Capital Transportation Program (CTP). The needed roadway improvement may be on a different schedule or it may not be in the CTP at all. A further concern is implementing roadway improvements without sufficient public involvement. When the project is DelDOT's, DelDOT utilizes a formal public participation process. However, when a private sector developer carries out the improvements, a similar public participation process may not be followed. ~~or at best it is~~ may be] insufficient.

MAJOR ISSUES

The regulations herein address the following issues and barriers to [implementing transportation improvements; the need for which is triggered by] development:

- Developer's inability to secure right-of-way for necessary improvements [which are required when counties and municipalities approve rezoning of property or new subdivisions or land developments.]
  - DelDOT's Capital Transportation Program
  - (CTP) schedule being different than the developer's schedule or not including the needed improvement.
  - Lack of a public participation process during the [~~consideration~~ planning and design] of development-related improvements.
- Lack of clarity and definition regarding DelDOT's role in assuring project quality.

**1.0 Purpose**

The Delaware State Senate passed SB 284 on June 8, 2004 and the Delaware House of Representatives passed it on July 1, 2004. SB 284 was signed into law on July 22, 2004 and it is codified at 17 Del.C. Section 507. [The essence of this legislation was to address the need for transportation improvements that are required to be made by developers when new development has been approved by local government.]

Section 507 directs DelDOT to establish rules and regulations to determine where and under what conditions it will:

- Use its real estate process to acquire the necessary right-of-way for [public purpose] improvements;
- Enforce the maintenance of safe operating conditions for the public during construction;
- Involve the public and inform them of the reason for and scope of improvements; and
- Assure compliance with applicable environmental and legal requirements.

Developers whose proposals trigger the need for improvements, or necessitate an acceleration of the timing of previously recognized DelDOT projects, shall contribute funds towards the necessary right-of-way acquisitions. Improvements are limited to those that do not negatively impact the State's ability to meet the conformity requirements of the [Federal] Clean Air Act [and its several amendments].

DelDOT's use of this authority is limited to areas where the State's own land use policies support the type and scale of the proposed development. As part of the approval process for transportation improvements built pursuant to this authority, DelDOT is required to consult with area representatives of state and local government. DelDOT retains the discretionary authority to use the provisions of Section 507 and its implementing regulations, or to decide not to make use of this authority in a given instance.

**2.0 Relationship to Strategies for State Policies and Spending**

Delawareans are concerned about the threat of sprawl, traffic congestion, loss of farmland and open space, diminished air and water quality, and a shortage of affordable housing.

Strategies for State Policies and Spending was adopted by Governor Ruth Ann Minner and published by the Office of State Planning Coordination to coordinate land use decision-making with the provision of infrastructure and services in a manner that makes the best use of Delaware's natural and fiscal resources. There are two fundamental policies that guide the State Strategies:

- State spending should promote quality, efficiency, and compact growth; and
- State policies should foster order and resource protection, not degradation.

Strategies for State Policies and Spending includes a map that serves as a graphic representation of the areas favored for growth. The map depicts four investment levels, of which the first three are appropriate locations for the application of these regulations: Level 1, Level 2, and Level 3. Level 3, however, is intended for longer term phased growth or land preservation. For a full description of the investment levels as well as the map, please visit: [www.state.de.us/planning/strategies](http://www.state.de.us/planning/strategies). The strategies of the State's Livable Delaware initiative [~~build on the~~

~~foundation laid by complement] the Strategies for State Policies and Spending. They are intended to encourage support] growth in areas that the State has agreed are most appropriate for and capable of accommodating this growth in an efficient and cost-effective manner, with a focus on existing communities and growth areas. Through these regulations, detailed herein, DeIDOT is empowered to secure right-of-way for roadway improvements that are consistent with and support this key objective of Livable Delaware.~~

### 3.0 Regulatory Procedures

The construction of the necessary transportation improvements may occur in one of the following two ways:

~~Alternative One: DeIDOT shall enter into an agreement with the entity seeking development approval whereby the [x developing entity takes the project lead and] assume[s] direct responsibility [and all costs] for the planning, design, [right-of-way acquisition,] construction, and inspection of [off-site] improvements. The agreement must include terms giving DeIDOT appropriate provisions for quality assurance and quality control. This is the preferred alternative.~~

~~Alternative Two: If DeIDOT determines that the aforementioned agreement is not feasible and practical, DeIDOT may [take the project lead and] assume responsibility for the scheduling, planning, design, [right-of-way acquisition,] construction, and inspection of the off-site [off-site] improvements as a DeIDOT project. The following include, but are not limited to, [reasons conditions] that may cause DeIDOT to [assume responsibility take the lead, but not the cost,] for the project:~~

- ~~The project is particularly complex. The project will still be wholly funded by the entity seeking development approval.~~
- ~~The project is already in the DeIDOT's CTP, planning and design are complete, but right-of-way has not been acquired. The developer shall contribute funds towards the necessary right-of-way acquisition and be responsible for any additional costs incurred as a result of the portion of the project being modified.~~
- ~~[The development and related improvements are part of a Transportation Investment District or similar master planned area. The developer will pay their fair share of the cost based on trip generation. The specific responsibilities of these several parties will be described in a Memorandum of Agreement.]~~

### 3.1 Project Eligibility

~~If a project [or improvement] is not in DeIDOT's CTP [, or in the CTP but not yet under design] and found to need right-of-way, it may be [eligible for Alternative One. In order to be eligible, the improvements must be offsite (non entrance and outside the limit of construction at the entrance) and must meet all of the following conditions: considered for eligibility if the following conditions are met:]~~

- ~~The development project for which the improvements are required [must is]~~
  - ~~[Be eC]onsistent with the local comprehensive plan;~~
  - ~~[Be eC]onsistent with Strategies for State Policies and Spending, including location in a Level 1, 2, or 3 State Strategy investment area; and~~
  - ~~[Be i]n conformance with the requirements of the Clean Air Act (CAA) regulations.~~
- ~~The need for the transportation improvement project must be documented and confirmed during the land use process [prior to the developer receiving as part of the] preliminary plan approval from the local land use agency.~~
- ~~[The transportation improvement is located adjacent to the public right-of-way. Improvements include but are not limited to, intersection upgrades, roadway widening, and improvements required at the entrance to the proposed development.]~~

~~[The need and eligibility are confirmed through completion of the following checklist:~~

~~Fig.A.1 Transportation Improvement Checklist~~

<del>Preliminary Plan Approval</del>	<del>Yes _____ No _____</del>
<del>Consistent with Comprehensive Plan</del>	<del>Yes _____ No _____</del>
<del>State Strategies Level 1, 2, or 3 Investment Area</del>	<del>Yes _____ No _____</del>

In conformance with Clean Air Act Regulations Yes ~~No~~

When the project has been found to be eligible, DeIDOT may still choose to defer or deny advancement of the project. Project deferral may be considered in cases where a project is located in an active transportation study area, or in an area where a study is about to be initiated, where the results could have a significant impact on or eliminate the need for the subject project.

Project denial may be considered in cases where the project would cause abutting property to lose access or be reduced in value to the extent that it would be rendered **[unusable,]** economically **[un-viable]**. Deferral or denial under these conditions shall be at DeIDOT's discretion.

### 3.2 Plan Preparation

**[After the project is accepted by DeIDOT, Pp]**lan preparation for preliminary engineering and final design of transportation improvements (also known as "construction plans") shall be in accordance with **[Section 4.5 of the Standards and Regulations for Subdivision Streets and State Highway Access Manual]** DeIDOT plan development standards.]

Right-of-Way (ROW) plans shall be in accordance with *DeIDOT's Right-of-Way Manual*. Additionally, right-of-way shall be verified through deed research **[and,]** examination of plot plans **[and DeIDOT highway, bridge and subdivision archives. ~~The Standards and Regulations for Subdivision Streets and State Highway Access contains the right of way plan checklist.~~]**

### 3.3 Public Input Process

Public input for land development is most critical during the exploratory sketch plan phase of the land use process **[at the and should be part of the] local land use agency['s process]**. During the design of transportation improvements, DeIDOT **[and the developer]** will solicit public input in a formal setting and provide information such as the implementation process, maintenance and protection of traffic (MOT), and potential impacts (e.g. travel time charts showing different alternative routes and project showing how long the public will be inconvenienced).

DeIDOT's Public Involvement Policy O-03 illustrates the range and levels at which the public has an opportunity to participate in the planning process. This policy states that public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement. DeIDOT shall consult with state and local governmental representatives once the concept plan is submitted. DeIDOT **[, with the participation of the relevant developer,]** is committed to educating the public about transportation issues, services and projects, as well as soliciting information, reaching consensus, and providing a way for the general public to express their needs, ideas, concerns, and perspectives relating to the transportation system.

Public input under th**[is e]** road improvement process shall be in accordance with DeIDOT's Public Involvement Policy O-03.

Regardless of whether a developer or DeIDOT takes the lead in making the transportation improvement, a minimum of one public meeting **[is required. One meeting]** shall be held after preliminary plan review. The need for other meetings, for example showing implementation and maintenance of traffic, will be determined by DeIDOT and included in the agreement between DeIDOT and the entity seeking development approval. The scope of the**[se additional]** meeting**[s]** can vary, depending on the impacts of the proposed transportation improvements. All adjacent property owners shall be notified **[by regular mail]** in writing 14 days prior to the public meeting, and offered an opportunity to comment. A notice shall be placed in a local newspaper of general circulation advertising the public meeting **[date and location for the proposed improvement, its scope, an indication of the expected project duration and the opportunity to discuss ~~as well as an estimate of how long and]~~ to what extent the public will be affected by the project.**

### 3.4 Review Process

The developer's engineer**[, who must be a Delaware-registered professional engineer,]** shall prepare and submit to DeIDOT for review and approval all construction plans, right-of-way plans, specifications, and estimates for the project. The design of roadway improvements shall be in accordance with the latest standards published by the American Association of State Highway and Transportation Officials (AASHTO), *DeIDOT's Road Design Manual*, **[~~DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access,~~ and the Manual on Uniform Traffic Control Devices (MUTCD). ~~Where conflicts exist, DeIDOT's Road Design Manual shall take precedence.~~]**

The plan submissions will be required to undergo separate reviews for construction and right-of-way plans:

- The construction plan submission will consist of a preliminary, semi-final, and final (or contract) plan submission. The submittals shall include design plans, specifications and cost estimates for

construction of the project.

- The right-of-way plan submissions shall include a semi-final and final plan submission.

The developer's engineer shall establish review dates with concurrence from DeIDOT for [all] construction and right-of-way plans. [These plans shall be reviewed by DeIDOT's Chief Engineer. ~~He or she~~ The developer's engineer shall ~~also~~] coordinate with the utility companies to determine existing utility locations and possible relocations.

Existing deeds and [recorded] plot plans shall be acquired [and applicable DeIDOT highway, bridge and subdivision plans shall be obtained] to establish and verify the existing right-of-way. The engineer shall attest to the right-of-way shown on the plans.

The engineer will work through DeIDOT's Development Coordination Section and the Pavement Management Section for pavement evaluation and design verification. This may include the need for pavement cores and subgrade soils analysis.

The engineer will work with DeIDOT's Design Services for hazardous material and/or contaminated site delineation. [The developer shall be responsible for any site remediation required.] The engineer shall prepare, apply for, and obtain all necessary permits and environmental or historic documentation required by federal, state, and local authorities. Copies of the permits and supporting documentation shall be provided to DeIDOT prior to a Notice to Proceed being issued for construction of the project.

### 3.4.1 Inspection

~~[Depending on the size and impact of the project on the abutting state maintained roadway, the level of inspection will vary. Off site improvement project inspection shall be in accordance with Section 6.6 of the Standards and Regulations for Subdivision Streets and State Highway Access Manual.]~~ DeIDOT will determine the level of inspection required for each project. Inspection will be provided by DeIDOT Public Works staff, DeIDOT construction staff, or an inspection consultant currently under contract with DeIDOT for inspection services.]

### 3.5 Real Estate Process

DeIDOT's Real Estate right-of-way acquisition process can be used to secure roadway improvements triggered by development[, only after the developer has exhausted all efforts to obtain the needed private property through voluntary good faith negotiations. The developer shall consult with the Real Estate Section, develop an acquisition plan and implement that plan with DeIDOT oversight]. Land acquisition shall be in accordance with DeIDOT's most current Real Estate Management Manual. DeIDOT engages the property owners and tenants in a process of notification, appraisal, and negotiations. [DeIDOT's Real Estate Section, or a qualified entity, with prior approval by DeIDOT, shall procure the necessary rights-of-way].

Based on the complexity, DeIDOT's Real Estate Section will determine whether an appraisal is necessary or if a valuation waiver [method] can be used. In instances where temporary access to a property is required, DeIDOT shall determine the lease value of the property for the duration of the project.

#### Process Steps:

3.5.1 Notification: property owners and tenants will be notified in one or both of the following ways: they will be contacted by a DeIDOT Real Estate representative or notified of public workshops. [This notification will occur at least six months in advance of any eminent domain action, should good faith negotiations fail to result in a signed contract.]

3.5.2 Valuation: property owners will receive fair market value for any land and/or buildings they are required to sell. A qualified, licensed independent appraiser may complete the appraisal, which is approved by an independent authority (DeIDOT). [If the offer of just compensation is estimated to be less than \$10,000, DeIDOT may authorize the use of one of two (2) appraisal waiver valuation methods and the offer to purchase may be made in the form of an Administrative Offer Summary (AOS). If the offer of just compensation is estimated to be more than \$10,000, but less than \$25,000, DeIDOT may authorize the use of one of two (2) appraisal waiver valuation methods and the offer to purchase may be made in the form of an Administrative Offer Summary (AOS) with the consent of the owner.] Property owners may, at their own cost, obtain their own appraisal.

3.5.3 Negotiations: a DeIDOT Real Estate representative will contact the property owner with a plan showing the amount of land needed and written confirmation of the amount of compensation being offered. The property owner will be given 60 calendar days to consider the offer. If the offer is accepted, both parties (DeIDOT and the seller) sign a binding contract and settlement is held.

3.5.4 Acquisition: A deed of conveyance is signed over when the check is delivered at settlement. If the

fair market value offer is not accepted, state law recognizes the right of the property owner to refuse the purchase offer and to have the value of the property established through the courts utilizing DeIDOT's power of eminent domain.(the right of the government to acquire private property for public use). That approach will only be used as an action of last resort. [If DeIDOT uses its power of eminent domain to obtain required right-of-way, DeIDOT and DeIDOT's legal counsel will assume responsibility for pursuing the legal action and the developer will deposit an amount equal to the property owner's estimate of valuation, plus estimated attorney's fees with DeIDOT.]

### 3.6 Design and Construction Administration

#### 3.6.1 Alternative One

The developer shall hire a [registered Delaware-registered professional] engineering firm possessing a Certificate of Authorization for all offsite improvement projects. If the developer designs the transportation improvements[, the cost of which the developer has responsibility,] (Alternative One), the developer shall provide DeIDOT with 100% of the right-of-way costs upon completion of the preliminary engineering and final determination of right-of-way. DeIDOT [or a qualified entity, with prior approval by DeIDOT,] will acquire the determined right-of way in accordance with the real estate process in section B.3.5 and DeIDOT's Real Estate Management Manual.

The developer shall hire a qualified contractor as determined by DeIDOT to implement the identified improvements. [The contractor shall be included on the DeIDOT Registry of Contractors.]

The developer shall also enter into a construction inspection agreement with a firm currently under contract [to DeIDOT or a firm currently on the Registry of Contractors] to provide such services with DeIDOT.

#### 3.6.2 Alternative Two

If DeIDOT designs and constructs the transportation improvements (Alternative Two), [prior to initiation of design services] the developer shall provide DeIDOT with a certified check for the estimated total cost of preliminary engineering and final design costs as approved by DeIDOT. [The design fee shall be paid to DeIDOT.] [u]pon final determination of the required improvements and at the same time as final site plan and preliminary entrance plan is submitted for DeIDOT's review and approval[, the developer and DeIDOT will reconcile any differences between the estimated design costs and actual costs.]

Prior to DeIDOT acquiring right-of-way for the offsite improvements, the developer shall provide DeIDOT with security in the amount of 100% of the estimated final construction and right-of-way acquisition costs as approved by DeIDOT.

The following forms of security shall be acceptable:

- Surety Bond issued by a bonding company licensed in Delaware.
- Commercial letter of credit issued by a lending institution licensed in Delaware.
- Certified check with escrow agreement.

DeIDOT shall issue a Notice to Proceed (NTP) for the construction after the right-of-way acquisition is completed. [Upon final determination of the required right-of-way acquisition and construction costs, the developer and DeIDOT will reconcile any differences between the estimated right-of-way acquisition and construction costs and the actual costs.

At no time will DeIDOT have responsibility for the cost of scheduling, planning, public participation, design, right-of-way acquisition, construction or inspection related to off-site improvements except as provided for in the section 4.0 of these regulations.]

[These regulations address the identified need for transportation improvements triggered by new development in cases where such improvements would not otherwise be possible due to right of way constraints. In addition to providing a process for meeting a public transportation need, these regulations also establish under what conditions this process may be utilized in support of land use and transportation infrastructure coordination.]

## [4.0 Finance

Except in those instances where DeIDOT has entered into an agreement to fund certain portions or phases of a transportation project or projects, DeIDOT will not provide financing for any portion or phase of a transportation project or projects covered by these regulations. Except in the instances cited above, the developer shall pay directly for all costs and expenses associated with said project. The developer may avail his or herself of the several types of financial vehicles commonly used for such purposes including bonds, letters of credit and escrow accounts.]

**STATE OF DELAWARE**  
**EXECUTIVE DEPARTMENT**  
**DOVER**

**EXECUTIVE ORDER NUMBER NINETY****Re: Establishing The Recycling Public Advisory Council**

**WHEREAS**, the average Delawarean produces 1,200 pounds of solid waste annually and much of that waste can and should be recycled;

**WHEREAS**, increasing Delaware's recycling efforts will benefit the environment and increase the useful life of the state's landfills;

**WHEREAS**, the Department of Natural Resources and Environmental Control (the "Department") and the Delaware Solid Waste Authority (the "Authority") promote varying aspects of municipal solid waste recycling in the State of Delaware;

**WHEREAS**, increasing our recycling efforts over the long-term will require a strong commitment on the part of Delawareans;

**WHEREAS**, schools, colleges, universities, municipalities, not-for-profit organizations, civic associations, and other community organizations are the entities most able to increase recycling within their borders and need assistance to provide the tools necessary to start recycling programs; and

**WHEREAS**, Delawareans increasingly recognize the importance of recycling and many Delawareans have expressed an interest in participating in curbside and other recycling programs,

**NOW, THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and Order as follows:

1. It shall be the goal of this State to achieve a fifty-one percent (51%) diversion rate for recyclables from Delaware's municipal solid waste stream comprised of residential and commercial solid waste.

2. The Recycling Public Advisory Council (Council) is re-established and continued. The Council shall be composed of eleven (11) members who shall be appointed by the Governor as follows:

- a. One member from the Department;
  - b. One member from the Authority;
  - c. One member representing county governments with such member being recommended by the Delaware Association of Counties;
  - d. One member representing municipal governments with such member being recommended by the Delaware League of Local Governments;
  - e. One member representing the recycling industry to be appointed by the Governor;
  - f. One member representing the waste hauling industry to be appointed by the Governor;
- and
- g. Five members representing community-based or public-interest groups to be appointed by the Governor.

3. Members of the Council, except for those appointed pursuant to subparagraphs a, b, and c of paragraph 2 above, shall serve of up to 3 years and may be reappointed. Members of the current Council shall continue in office for the balance of their terms and shall also be eligible for reappointment. Members shall be appointed for staggered terms so that no more than 3 appointments shall expire in any one calendar year. Members may be reimbursed for travel to and from meetings. The Governor shall appoint a Chairman from among the eleven members. Actions of the Council shall be approved by a majority vote of the Council. At least six (6) members of the Council shall constitute a quorum.

4. The Recycling Public Advisory Council shall:
- a. Advise the Department and the Authority on all aspects of recycling;
  - b. Advise the Department in developing grant criteria, including local match requirements, and selection of applications as well as provide an annual assessment of the revenue needed to satisfy the grant requirements;
  - c. Develop, in conjunction with the Department and the Authority, a methodology for measuring recycling rates;
  - d. Provide advice and recommendations regarding the recycling outreach and education

programs conducted by the Authority and/or the Department;

e. Report to the Governor and the General Assembly annually by March 1 of each year on the status of recycling activities in Delaware. Said report shall include, but not be limited to the following:

(1) status of attainment of the 51% recycling goal;

(2) an accounting of the recycling grants program and any recommendations for future funding of the grants program;

(3) an assessment of the activities of both the Department and the Authority in achieving a 51% municipal solid waste recycling goal;

(4) an objective, auditable accounting of recycling rates for total solid waste, municipal solid waste, and residential solid waste; and

(5) such other recommendations as the Council shall deem appropriate.

f. Use the definitions of 'recycling' and 'municipal solid waste' as stated by the United States Environmental Protection Agency in its document EPA530-R-97-011 dated September 1997. The Council shall be able to adopt changes to these definitions.

5. The Department's Division of Air and Waste Management, in concert with the Authority and the Council, shall:

a. Monitor the State's recycling initiatives and measure Delaware's achievements toward attainment of the 51% recycling goal;

b. Implement a grant program for use by schools, colleges, universities, municipalities, not-for-profit organizations, civic associations, and other community organizations in reaching the statewide recycling goal specified herein;

c. Design and implement public educational efforts aimed at increasing public awareness of recycling opportunities;

d. Implement a public school recycling initiative whereby our school systems are able to participate in and benefit from increased recycling opportunities;

e. Provide technical assistance to local entities to assist them in increasing their recycling rates;

f. Provide administrative support to the Council;

g. Report to the Governor and the Office of Management and Budget on the need for staff to provide this support; and

h. Promote any other measures identified by the Council to support the achievement of the 51% recycling goal.

6. The Department shall make matching grants available to schools, colleges, universities, municipalities, not-for-profit organizations, civic associations, and other community organizations to implement programs to reduce the amount of municipal solid waste disposed of in Delaware. Grants may be used for implementing or expanding recycling programs, encouraging composting of yard waste, implementing "pay-as-you-throw" programs, or any other activity that supports the achievement of the 51% recycling goal. The availability of grant money shall be subject to annual appropriations by the General Assembly.

7. Executive Order Number 82 adopted September 14, 2000, is rescinded.

Approved: September 6, 2006

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Developmental Disabilities	Ms. Ernestine C. Brittingham	10/20/2006
	Ms. Cheryl A. Coffin	08/25/2009
	Ms. Gloria A. Duffy	08/25/2009
	Mr. Anthony L. Hortsman	08/25/2009
	Mr. Robert Osgood	08/25/2009
	Mr. Thomas E. Rust	08/25/2009
	Ms. Shirley C. Jackson	08/25/2009
Architectural Accessibility Board	Mr. Chad J. Toms	08/25/2010
Authority on Radiation Protection	Frances S. Esposito, M.D.	07/01/2009
	Mr. William L. Holden, III	07/01/2009
	Ms. Sandra J. Moody	07/01/2009
Board of Architects	Mr. Alvin W. French	09/05/2009
	Ms. Julia C. Hopkins	09/05/2009
Board of Chiropractic	Mr. William T. Cowan, III	09/05/2009
	Mr. C. Terry Jackson, II	09/05/2009
	Ms. Prameela D. Kaza	09/05/2009
Board of Cosmetology and Barbering	Ms. Brenda L. Porter	08/25/2009
Board of Directors, Riverfront Development Corporation	Ms. M. Carter Franke	Pleasure of the Governor
Board of Examiners in Optometry	Sonja P. Biddle, O.D.	09/05/2009
	Carl Maschauer, O.D.	09/05/2009
	Charles J. Simon, Jr., O.D.	08/10/2009
Board of Landscape Architecture	Ms. Deborah S. Van Dermark	08/25/2009
Board of Medical Practice	Mr. Vance G. Daniels, Sr.	09/05/2009
	Anthony M. Policastro, M.D.	09/05/2009
Board of Nursing	Ms. Wanda L. Cohee	09/05/2009
	Ms. Evelyn Nicholson	09/05/2009
	Ms. Pamela C. Zickafoose	09/05/2009
Board of Occupational Therapy Practice	Ms. Nancy K. Broadhurst	08/25/2009
Board of Pharmacy	Mr. David L. Bonar	07/01/2009
	Mr. Angelo J. Chiari	07/01/2009
	Mr. Geoffrey N. Christ	07/01/2009
	Mr. Sebastian Hamilton	07/01/2009

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# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Pharmacy	Ms. Sandra S. Robinson	07/01/2009
Board of Plumbing Examiners	Mr. Bruce F. Collins Mr. Joseph Downs	09/15/2009 09/15/2009
Board of Pilot Commissioners	Mr. Thomas J. Cook Mr. David A. Potter, Jr.	08/06/2009 09/05/2011
Board of Professional Land Surveyors	Mr. Laurence McBride	08/25/2009
Child Death, Near Death and Stillbirth Review Commission	Kevin F. Sheahan, M.D.	08/25/2009
Child Placement Review Board-New Castle	Ms. Marion E. Gibbs Ms. Mildred L. Hamilton Ms. Anne R. Kauffman Ms. Jeanmaire Leonard Ms. Pamela Meyer Ms. Susan Schneider	08/25/2009 08/25/2009 08/25/2009 08/25/2009 08/25/2009 08/25/2009
Child Placement Review Board-Sussex	Mr. Orville D. Basinski Ms. Frances L. Henry Ms. Martha B. Keller	08/25/2009 08/25/2009 08/25/2009
Child Protection Accountability Commission	Mr. Randall Williams	Pleasure of the Governor
Commission on Adult Entertainment Establishments	Mr. Robb H. Carter	07/05/2009
Council on Boiler Safety	Ms. Karen A. Maxson Mr. Gilbert E. Roberts, Jr.	09/06/2009 09/06/2009
Council on Correction	Mr. Stephen B. Ackerman Mr. James D. Burton Ms. Carole Gibson Reverend Tyrone C. Johnson Mr. Roger M. Levy Ms. Lois A. Myers Ms. Rita Patrick Mr. Richard D. Senato	09/15/2009 09/15/2009 09/15/2009 09/15/2009 09/15/2009 09/15/2009 09/15/2009 09/15/2009
Council on Forestry	Ambrose O. Anoruo, Ph.D.	08/25/2009
Council on Libraries	Mr. George A. Barczewski Ms. Laura E. Singleton	08/25/2009 10/20/2006

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Council on Manufactured Housing	Mr. Ryan S. Class	09/15/2008
	Mr. Robert Filmore	09/28/2008
	Ms. Lisa Lewandowski	09/15/2008
	Mr. Richard E. Maly	09/28/2008
	Mr. Fred A. Neil	09/28/2008
	Ms. Patricia A. Weyl	09/28/2009
Council on Real Estate Appraisers	Mr. George Fantini	08/25/2009
Council on Services for Aging and Adults with Physical Disabilities	Ms. Azalia S. Briggs	08/25/2009
	Ms. Nancy J. Martin	01/07/2008
	Ms. Patricia J. Painter	01/07/2008
Council on Social Services	Mr. Robert L. Doyle, III	09/27/2009
Council on Soil and Water Conservation	Mr. H. Wallace Cook	09/15/2009
	Ms. Constance C. Holland	09/15/2009
	Mr. Harry E. Hunsicker, Jr.	09/15/2009
	Hiram Lasher, DVM	09/15/2009
	Ms. Barbara J. Sapp	09/15/2009
	Mr. William W. Vanderwende	09/15/2009
Council on the Blind	Ms. Margaret McBride	01/12/2007
	Mr. Lloyd R. Schmitz	09/06/2009
	Ms. Deborah Yancey	09/06/2009
Council on Transportation	Mr. Lee J. Beetschen	09/06/2009
	Mr. Walter E. Kee, Jr.	04/16/2007
Delaware Advisory Council on Career and Technical Education	Mr. Terry Wiley	Pleasure of the Governor
Delaware Agricultural Lands Preservation Foundation	Mr. G. Ray Staats	09/06/2009
	Mr. William W. Vanderwende	09/06/2009
Delaware Greenways and Trails Council	Mr. Charles R. Emerson	08/25/2009
	Ms. Deborah M. Heaton	08/25/2009
Delaware Heritage Commission	Mr. Michael L. Richards	09/15/2009
Delaware State Arts Council	Reverend John D. Ranney	09/06/2009
	Mr. Carson T. Zullinger	09/06/2009
Delaware State University Board of Trustees, Trustee	Mr. Bennie L. Smith	08/25/2012
	Calvin T. Wilson, M.D.	08/25/2012

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Dental Hygiene Advisory Committee	Ms. Bonnie L. Thomas	08/25/2009
Family Court of Delaware, Associate Judge	The Honorable Mark D. Buckworth	09/06/2018
	The Honorable Jay H. Conner	09/06/2018
Farmland Evaluation Advisory Committee	Mr. Willis L. Kirk	07/01/2009
Governor's Advisory Council for Exceptional Citizens	Ms. Cathy L. Cowing.	Pleasure of the Governor
	Mr. G. Patrick Hefferman	Pleasure of the Governor
	Mr. Christopher A. Mcintyre	
Governor's Commission on Community and Volunteer Service	Mr. Vincent F. Jacono, Jr.	08/25/2009
	Ms. Carol A. Zeigler	08/25/2009
Governor's Consortium on Hispanic Affairs, Chair	The Honorable Aida Waserstein	Pleasure of the Governor
Governor's Consortium on Hispanic Affairs, Member	Mr. David G. Burton	Pleasure of the Governor
	Christine A. Cannon, Ph. D.	Pleasure of the Governor
	Mr. John M. Dieleuterio	Pleasure of the Governor
	Carols Duran, M.D.	Pleasure of the Governor
	Mr. Israel Figueroa	08/25/2009
	Ms. Zaida I. Guajardo	Pleasure of the Governor
	Ms. Lolita Lopez	Pleasure of the Governor
	Ms. Maria M. Matos	Pleasure of the Governor
	Ms. Rose Rivera	Pleasure of the Governor
Governor's Council on Hispanic Affairs, Chair	Mr. George L. Camacho	Pleasure of the Governor
Governor's Council on Lifestyles and Fitness	Avron Abraham, Ph.D	08/25/2008
	Sujata K. Bhatia, M.D.	08/25/2008
	The Honorable John C. Carney, Jr.	08/25/2008
	Ms. Marianne B. Carter	08/25/2008
	Ms. Debbie I. Chang, MPH	08/25/2008
	Mr. Donald L. Kjelleren	08/25/2008

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Governor's Council on Lifestyles and Fitness	Tony S. Reed, M.D.	08/25/2008
Health Advisory Council	Ms. Rebecca L. King	Pleasure of the Governor
Interagency Coordinating Council	Mr. Thomas F. Kelly Mrs. Pamela M. Reuther	Pleasure of the Governor 08/25/2009
Justice of the Peace, Sussex County	The Honorable William L. Boddy	07/10/2012
Manufactured Home Installation Board	Ms. Jill A. Fuchs Mr. Victor F. Kennedy	09/15/2009 09/15/2009
New Castle Vo-Tech Board of Education	Mr. Robert H. Strong	09/06/2013
Organ and Tissue Donor Awareness Board	Mr. James T. Quirk Sidney J. Swanson, III, M.D.	08/25/2009 08/25/2009
Parks and Recreation Council	Mr. Gregory E. Johnson	08/30/2008
Pesticide Advisory Committee	Mr. Earl J. Hurd Mr. Francis J. O'Neil, III	09/15/2009 09/15/2009
Southern Regional Education Board	The Honorable David P. Sokola	06/30/2010
State Employee Benefits Advisory Council, Chair	Mr. Edwin A. Tos	09/06/2009
State Employee Benefits Advisory Council,	Ms. Christine M. Long	09/06/2009
State Fire Prevention Commission	Mr. Kennard L. Pyle	Until a successor is duly appointed
State Rehabilitation Council	Mr. Brian J. Bard Mr. Wade L. Churchfield Ms. Kathryn S. Herel Ms. Claire McDonough Mr. Alexander J. Rose	08/25/2009 08/15/2009 08/15/2009 08/25/2009 08/15/2009
Statewide Independent Living Council	Mr. Timothy W. Brown	08/25/2009
Supreme Court of the State of Delaware, Justice	The Honorable Carolyn Berger	09/06/2018
Town of Bethany Beach, Deputy Alderman	Mr. Charles F. McMullen	09/06/2008

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# GENERAL NOTICES

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

### Temporary Assistance For Needy Families (TANF) Program Work Verification Plan

#### DSS PUBLIC NOTICE #06-43

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 initiated proceedings to provide information of public interest with respect to the TANF Work Verification Plan.

This notice is being given to provide information of public interest with respect to the Temporary Assistance for Needy Families (TANF) Work Verification Plan.

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109-171) was signed into law. It includes provisions to reauthorize TANF and build on this program's successes. The new law addresses the needs of families by maintaining the program's overall funding and basic structure, while focusing increased efforts on building stronger families.

The interim final rule that HHS published on June 29, 2006 implements the statutory changes enacted in the reauthorization of TANF in the DRA. Under the rule, a State must establish and employ procedures that include submitting a completed Work Verification Plan to the Secretary for approval.

The text of 45 CFR §261.62 specifies what a State must do to verify the accuracy of its work participation information, including the required contents of the Work Verification Plan. The plan is organized into six sections: countable work activities; hours engaged in work; work-eligible individuals; internal controls; verification of other data used in calculating the work participation rates; and, submittal procedures.

A State's Work Verification Plan is a planning document that may be phased-in over a period of time and may also require substantial revision in future months. All procedures and internal controls must be in place by October 1, 2007. The State should describe the program it will have in effect on October 1, 2006, but States are also encouraged to reflect its intended program design based on the information available to it at the time of submission. If actual practice differs from future intent, the State will explain where those differences appear. The State may amend its Work Verification Plan at any time during the course of the fiscal year in accordance with the regulations at 45 CFR §261.63(c).

Copies are available upon request by contacting Stacey McKiernan, Employment and Training Administrator, at 302-255-9622. The TANF Work Verification Plan can also be viewed on the Division's website at:

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

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## DEPARTMENT OF INSURANCE PUBLIC NOTICE

### DOMESTIC/FOREIGN INSURERS BULLETIN NO. 21

Revised

**TO: ALL INSURERS PROVIDING PROPERTY INSURANCE COVERAGE IN DELAWARE**  
**RE: REQUIRED NOTICES TO BE PROVIDED TO CONSUMERS IN THE STATE OF DELAWARE**  
**DATE: August 30, 2006**

We are currently witnessing Delaware's first organized termination of homeowners and commercial property insurance policies based upon geographic location of homes or businesses. This necessitates that I take immediate action to ensure that policyholders whose coverage is terminated are aware of the availability of alternate coverage for at least part of the value of their home or commercial property in the event that they are unable to obtain other coverage prior to the effective date their policy is terminated,

The purposes of this bulletin are (a) to ensure that policyholders whose property insurance contracts are

terminated are aware of the importance of seeking out replacement insurance immediately and (b) to ensure that those policyholders are fully aware of the state's industry placement facility program, which is designed to ensure that they can obtain replacement property insurance.

1. This bulletin shall apply to homeowners and commercial property insurance policies. A homeowners insurance policy for purposes of this bulletin means a property contract of insurance covering residential properties as defined by 18 **Del.C.** §4120. A commercial property insurance contract means a commercial multiple peril package policy.

2. Any communication notifying a policyholder of the termination, as that term is defined in 18 **Del.C.** §4121, of a homeowners or commercial property insurance policy shall contain:

(a) A prominent notification that the policyholder should immediately begin seeking alternative property insurance from a licensed Delaware insurance agent if the policyholder intends to avoid a lapse in coverage, and

(b) A prominent notification that the policyholder may be entitled to purchase insurance from the state's industry placement facility program (the FAIR Plan).

The notification required by this paragraph shall contain the name and contact information for the state's industry placement facility program, and shall be in at least 18 point type, including the website address. <http://www.defairplan.com>.

3. The notification required by Paragraph 2 shall also be sent by the carrier terminating coverage to any producer through whom the policyholder purchased his or her insurance policy.

4. This bulletin shall take effective immediately and shall remain in full force and effect until such time as it is modified, terminated or superseded by any statute or regulation.

5. This bulletin shall not apply to cancellations or terminations resulting from the non-payment of premium.

6. This bulletin shall apply to surplus lines policies as well as policies written by admitted insurers.

7. The Department of Insurance will be initiating discussions with the state's existing industry placement facility program to determine its adequacy. Those discussions will include discussions of limitations upon available coverage, vacancy limitations, permissible bases for refusal of coverage, and rate-setting procedures.

8. This bulletin supersedes Domestic/Foreign Bulletin 21 issued August 9, 2006.

Matthew Denn  
Insurance Commissioner

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## DEPARTMENT OF INSURANCE PUBLIC NOTICE

### FORMS AND RATES BULLETIN NO. 30

**TO: ALL INSURERS**  
**RE: INTERPRETATION OF 18 Del.C. §2506(a)**  
**DATED: October 20, 2006**

It has come to the attention of the Department that there may be some confusion in the marketplace regarding the Department's interpretation of section 2506(a) of the Delaware Insurance Code. Section 2506(a) provides as follows:

The Commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter. The filings shall be deemed to meet the requirements of this chapter unless disapproved by the Commissioner, except as otherwise provided for certain filings pursuant to subsections (c), (d) and (e) of this section [relating to filings by insurers and health service corporations for medical and hospital expense-incurred insurance policies and plans].

## GENERAL NOTICES

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The Department interprets this section of the Insurance Code to be a “file and use” provision. In other words, the statute authorizes an insurer to use a filed rate upon its filing with the Department without having to await approval of the Commissioner.

Matthew Denn  
Insurance Commissioner

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## DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, November 16, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE

#### PUBLIC NOTICE

#### "PUBLICATION OF TAX INFORMATION"

This regulation is promulgated pursuant to the authority given the Secretary of Finance, State of Delaware (the Department) in section 354 of Title 30 of the **Delaware Code** as well as section (8) of the new act.

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word "taxpayer" appearing in the first line of section (b)(2) and in section (b)(4) means only "the entities other than natural persons" referred to in last part of section (b)(2) or whether the word "taxpayer" as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at [c.yegla@state.de.us](mailto:c.yegla@state.de.us) or by phone to (302) 577-8680. The deadline for receipt of public comments is November 30, 2006.

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

#### NOTICE OF PUBLIC COMMENT PERIOD

#### Long Term Care Medicaid – Retirement Funds

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by November 30, 2006.

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

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

#### NOTICE OF PUBLIC COMMENT PERIOD

#### Long Term Care Medicaid – Annuities

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

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Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) to comply with the treatment of annuities provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by November 30, 2006.

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

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## **DEPARTMENT OF INSURANCE**

### **1501 Medicare Supplement Insurance Minimum Standards**

#### **NOTICE OF REGULATORY CHANGE**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of a proposed change to Department of Insurance Regulation 1501 relating to producer continuing education. The Commissioner proposes to amend **Regulation 1501** relating to **MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS**. The docket number for this proposed amendment is 291.

The proposed change to the regulation appears only in section 17.4.4 of the regulation and is intended to correct the inadvertent omission of certain language designed to clearly indicate that any insurer offering Medicare Supplement Insurance in the State of Delaware is required to offer Plans A, B, C and F to all eligible consumers. This amendment corrects that omission and is the only proposed change to the regulation.

The proposed amendment can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Wednesday, December 3, 2006, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

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## **DEPARTMENT OF JUSTICE**

### **FRAUD AND CONSUMER PROTECTION DIVISION**

#### **Debt Management Services**

#### **NOTICE OF PUBLIC HEARING**

The Attorney General in accordance with 6 **Del.C.** §2432(h) has proposed to adopt rules and regulations to implement the Delaware Uniform Debt Management Act in 6 **Del.C.** Chapter 24A.

A public hearing will be held at 10:00 a.m. on December 11, 2006 in the Attorney General's conference on the 6th floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, 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 Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5th floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

**FRAUD AND CONSUMER PROTECTION UNIT****Identity Theft Passports****NOTICE OF PUBLIC HEARING**

The Attorney General in accordance with 11 **Del.C.** §854A(e) has proposed to adopt rules and regulations to implement the Identify Theft Passport program established under 11 **Del.C.** §854A. The rules provide a procedure for submitting a police report and application from a victim of identity theft in order to obtain a certificate and passport card from the Attorney General.

A public hearing will be held at 10:00 a.m. on December 4, 2006 in the Attorney General's conference on the 6<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, 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 Consumer Protection Unit of the Department of Justice at Carvel State Office Building, 5<sup>th</sup> floor, 820 N. French Street, Wilmington, DE 19801. Persons wishing to submit written comments may forward these to the Director of the Consumer Protection Unit at the above address. The final date to receive written comments will be at the public hearing.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****NOTICE OF PUBLIC HEARING****Title of of the Regulations:**

Amendment to Regulation No. 1124 Control of Volatile Organic Compounds Emissions

**Brief Synopsis of the Subject, Substance and Issues:**

Regulation 1124 establishes emission standards for sources emitting volatile organic compounds (VOCs). VOC emissions are precursors to the formation of ozone and Delaware does not meet the federal air quality standards for ozone. This amendment proposes to add a new section, Section 46, to control the emissions of VOCs from lightering operations that occur in the waters of the State. Lightering is the process where the draft of large ocean going vessels is reduced by bulk transfer of cargo (usually crude oil) from the ocean going vessels to smaller service vessels. This reduction in draft is necessary for the ocean going vessel to be able to proceed upriver. In 2002, more than 1,836 tons of VOCs were emitted during lightering operations. Lightering operations represented the largest stationary VOC emission source in Delaware.

Some of the VOCs emitted during lightering operations are also classified as hazardous air pollutants (HAPs). It was estimated that in 2002 nearly 200 tons of HAPs were emitted during lightering operations. These HAPs include benzene, toluene, xylenes, ethyl benzene and various polycyclic aromatic hydrocarbons (PAHs). Benzene is a known human carcinogen and benzo(a)pyrene, a PAH, has been classed as a probable human carcinogen. Exposure to the other HAPs can have a non-cancer impact on the public health, safety and welfare. The emissions of these HAPs will also be reduced under this amendment.

**Notice of Public Comment:**

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Monday, December 4, 2006 beginning at 6:00PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE. Interested parties may submit comments in writing to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

**Prepared By:**

James R. Snead (302) 323-4542 September 25, 2006

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**2500 Board of Pharmacy**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Pharmacy, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §2509, proposes amendments to its regulation 9.0 relating to hospital pharmacies. Specifically, the amendment to 9.0 Hospital Pharmacy removes provisions relating to hospitals served by off-site pharmacies.

A public hearing is scheduled for Wednesday, January 17, 2007 at 9:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Mariah Krass at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Mariah Krass at the above address or by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

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**WELCOME**

Welcome to the Delaware Department of Agriculture website. I hope you will use this as a means of learning more about the Department and its services and more about Delaware Agriculture. The Department's mission is to sustain and promote the viability of food, fiber, and agricultural industries in Delaware through quality services that protect and enhance the environment, health, and welfare of the general public. We have a dedicated staff who strive effectively and efficiently to accomplish the Department's mission. I invite you to call the Department for information, assistance, and services. [Contact Us](#)

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**Photos**



September 29, 2006 - Ribbon Cutting Event  
Left to right:  
Secretary Michael T. Scuse  
Walter King, President of Mid-Atlantic Breeders' Association  
Governor Ruth Ann Minner  
Marilyn Elmer, Director USDA Rural Development  
Delaware and Maryland



Mid-Atlantic Breeders' Plant



Governor Ruth Ann Minner receives replica of 2006 Delaware White House Decorated Egg from Susan Monahan of Dover