
Delaware Register of Regulations

Issue Date: October 1, 2006

Volume 10 - Issue 4 Pages 591 - 762



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Final

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

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.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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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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*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 16	4:30 p.m.
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.

DIVISION OF RESEARCH STAFF

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

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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.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 284

PUBLIC NOTICE

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

284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction

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** 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction in order to provide a process for the certification and licensure of public education employees who work in the Department of Education, in Adult Education and in Prison Education Programs whose work responsibilities are directly related to Curriculum and Instruction.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses certification and licensure issues not student achievement.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses certification and licensure issues 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 certification and licensure issues not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses certification and licensure issues not the legal rights of students.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does not effect decision making at local schools and school districts.

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 does not effect reporting or administrative requirements or mandates 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 will be located at the Department of Education.

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 enabling legislation requires that regulations be adopted for the certification and licensure of these populations.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the local boards and there is a minimal cost of time to the Department of Education.

284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction

1.0 Content

This regulation shall apply to the licensure and certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs whose work responsibilities are directly related to curriculum and instruction, pursuant to 14 Del.C. §121 (c). This regulation does not apply to those persons who serve as instructors for apprenticeship, trade extension or special interest courses.

2.0 Definitions

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

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. 121 (c).

"Adult Education Programs" means programs designed for adult learners providing for both basic skills education and the attainment of a high school diploma. Programs are provided through the James H. Groves High School, General Educational Development (GED) and Adult Basic Education (ABE) Programs and Adult English Language Learners.

"Clock Hour" means actual time spent in professional development, not credit hours.

"Clusters" means focused groups of approved professional development activities that lead to measurable and observable knowledge and skills. Clusters shall be approved by the Professional Standards Board and the State Board of Education.

"College Credit" means graduate or undergraduate level course work and continuing education units (CEUs) completed at, or through, a regionally accredited college or university.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. 121 (c).

"Composite Score" means a total of a Public Education Employee's scores on all three (3) subtest of PRAXIS I which are equal to, or greater than, the sum of the passing scores on the three subtests. Scores from either the PRAXIS I (PPST) paper and pencil test or from the PRAXIS I (CPPST) computerized test may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT) may be used when applying the composite score provision, but may not be used in conjunction with scores from the PRAXIS I

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(PPST) paper and pencil test or with the PRAXIS I (CPPST) computerized test.

"Curriculum or Assessment Development" means work with a local, state, national, or international education agency or organization designing curriculum or assessments for improved educational practice in an area related to an individual's professional responsibilities.

"Date of Hire" means the effective date of employment by the Department or other employing authority.

"Department" means the Delaware Department of Education.

"Educational Project" means an individual professional growth project of 15 or more clock hours, including a research project not related to a course for which credit is claimed, completed to enhance the individual's professional practice, with the development of a final product or report.

"Educational Travel" means a travel experience including 15 or more clock hours of work time directly related to the individual's professional responsibilities, including a final project to be used to enhance the individual's work.

"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 General Knowledge" means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing.

"Exigent Circumstances" means unanticipated circumstances or circumstances beyond the Public Education Employee's control, including, but not limited to, expiration of a license during the school year, serious illness of the Public Education Employee or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the Public Education Employee's temporarily leaving active service.

"Good Moral Character" means conduct which is consistent with the rules and principles of morality expected of an educator.

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

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. §121(c).

"Jurisdiction" means a state, territory or country.

"Knowledge and Skills" means understandings and abilities that, when acquired by Public Education Employees, lead to more effective execution of their work responsibilities.

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

"License Holder or Licensee" means any individual who holds an Initial License, Continuing License or Advanced License.

"Maintenance of Proficiency" means evidence of valid renewal of National Board for Professional Teaching Standards certification.

"NBPTS or Similar National Certification" means a certificate from the National Board for Professional Teaching Standards, or similar body as approved by the Professional Standards Board, verifying completion of all requirements in an individual's job related area of the profession or, in the case of an individual seeking, but not earning, the national certificate, verification of the clock hours devoted to completing the requirements for the national certificate.

"Part Time Adult Education Employees" means those teachers, counselors, site coordinators and administrators who work in adult education programs "part time" as defined by the State Pension Office.

"PRAXIS I or PPST" means a test from Educational Testing Service of general knowledge in reading, writing, and mathematics.

"PRAXIS I CBT" means the discontinued PRAXIS I computer based test from Educational Testing Service taken between November 1993 and December 2001, with a possible score range of 300 to 335. Scores from the PRAXIS I CBT test may not be combined with scores from the PRAXIS I paper and pencil test or the PRAXIS I computerized test (CPPST) to derive a composite score.

"PRAXIS I CPPST" means the PRAXIS I computerized test from Educational Testing Service which began in January 2002. This test, which is delivered in a computer format, has a possible score range of 150 to 190.

Scores from the CPPST and the PRAXIS I (PPST) paper and pencil test may be combined for a composite score.

"Presentation" means preparation and presentation as a workshop or conference presenter or course instructor on a topic related to the individual's professional responsibilities.

"Prison Education Programs" means programs provided by the Department of Education for incarcerated adults within the four level five (5) institutions in the State.

"Professional Conference, Workshop, Institute, or Academy" means a program offered either within, or outside, the state that contributes to the participant's professional knowledge or skills in effectively conducting his/her work in education.

"Professional Development" means classes, seminars, workshops, collaborative work groups, learning communities, or cohort teams which result in the acquisition of knowledge and skills which lead to more effective execution of work responsibilities.

"Professional Development Activities" means activities designed to enhance knowledge and skill to promote continuous professional growth and to improve the performance of Public Education Employees.

"Professional Development Cluster" or "Cluster" means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Professional Programs or Committees" means job related service, designed to enhance the profession.

"Publication" means the preparation of a formally published book, article, report, study, or grant that contributes to the education profession or adds to the body of knowledge in an individual's specific field, but does not include such items prepared as part of a course for which an individual is also claiming credit.

"Public Education Employee" means a Public Education Employee whose work responsibilities are directly related to curriculum and instruction, and includes Department employees, adult education employees and prison education employees but does not include public school Public Education Employees who shall be licensed and certified in accordance with 14 Del.C. Ch.12 Subchapters II and III or persons who serve as instructors for apprenticeship, trade extension or special interest courses.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1205.

"Standard Certificate" means a credential issued to certify that a Public Education Employee in the Department of Education, Adult Education and Prison Education Programs whose work responsibilities are directly related to curriculum and instruction has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, supervise a particular area at the Department or teach a particular category of students.

"State" means State of Delaware.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 Del.C. §104.

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

"Student Teaching Program" means a traditional student teaching placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

"Suspension" means the temporary removal of an Initial License for failure to pass the PRAXIS I test.

"Unfit" means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, willful neglect of duty, disloyalty or falsification of credentials.

"Valid and Current 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 Issuance and Renewal of an Initial License

In accordance with 14 Del.C. §121(c), the Department shall issue an Initial License to a Public Education Employee who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4 year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a

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minimum of 91 days of long term teaching experience at one assignment or other related experience in a private or public educational agency or institution, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternatives as described in 3.2.4. For the purposes of this regulation, a bachelor's degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An Initial License shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience or to a Public Education Employee who previously held a valid Delaware Standard or Professional Status Certificate who has been out of the profession for more than three years. In addition to an Initial License, applicants shall also apply for a Standard Certificate in the particular area, subject, or category in which they wish to be employed, and shall verify that they possess the prescribed knowledge, skill or education to practice in that area, subject, or category.

3.1 A Public Education Employee applying for an Initial License shall submit the completed application form, official transcripts, and official scores on an examination of general knowledge, such as the PRAXIS I tests in any format, as defined in 2.0, to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the Public Education Employee in an unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 A Public Education Employee seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests (PPST) or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre professional Skills Test (PPST) taken between July 1, 1983 and October 22, 1993: reading, 175, mathematics, 175, writing, 172.

3.2.2.1.2 PRAXIS I (PPST) Paper and Pencil Tests and thereafter with a possible score range of 150 to 190 and PRAXIS I Computerized Pre Professional Skills Tests taken January 1, 2002 and thereafter, both of which have a possible score range of 150 to 190, with passing scores of: reading, 175, mathematics, 174, writing, 173.

3.2.2.1.3 PRAXIS I, Computer Based Tests (CBT) (Tests taken between October 23, 1993 and December 31, 2001), with passing scores of: reading, 322, mathematics, 319, writing, 319.

3.2.3 Public Education Employees holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST or PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken after April 1, 1995 and presented for exemption shall meet the scores set forth below due to a re centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter shall be accepted as fulfillment of the PRAXIS I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to April 1, 1995, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption shall meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test shall be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test shall be accepted as fulfillment of the PRAXIS I mathematics requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST or PRAXIS I, shall be

submitted within the same timeline as that required for PRAXIS I and scores shall pre date the employment date.

3.2.6 Timeline for Examination of General Knowledge

3.2.6.1 A Public Education Employee applying for an Initial License shall pass the three PRAXIS I (PPST) tests in any format or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year. If proof of passage of Praxis I is not provided by the end of the next consecutive fiscal year, the Initial License shall be suspended. Notwithstanding the foregoing, the Department or other employing authority may submit to the Secretary of Education a written request for a one year extension. The request shall document the effectiveness of the applicant.

3.2.6.1.1 Evidence of passage of PRAXIS I within the time period of the suspension shall result in the reinstatement of the Initial License.

3.2.6.1.2 If proof of passage of PRAXIS I is not provided by the end of the next consecutive fiscal year, the Initial License shall be suspended for a maximum of two years.

3.2.6.1.3 Suspension

3.2.6.1.3.1 A Public Education Employee who does not pass PRAXIS I during the time period of the suspension, and whose Initial License is expired, shall reapply and may be issued an Initial License, valid for three years, if he/she meets the requirements for initial licensure then in effect.

3.2.6.1.3.2 Notwithstanding the foregoing, the Department or other employing authority may submit to the Secretary of Education a written request for a one year extension. The request shall document the effectiveness of the applicant.

3.2.6.1.4 Composite Score

3.2.6.1.4.1 Scores from either the paper and pencil PRAXIS I (PPST) test or from the computerized PRAXIS I (CPPST) test, begun in January, 2002, both of which have a possible score range of 159 to 190, may be used when applying the composite score provision. Scores from the PRAXIS I computer based test (CBT), taken between November, 1993 and December 31, 2001 may be used when applying the composite score provision, but may not be used in conjunction with the paper and pencil PRAXIS I test or with the computerized PRAXIS I (CPPST) test.

3.2.6.1.4.2 A Public Education Employee applying for an Initial License who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage.

3.2.6.1.4.3 Notwithstanding the use of a composite score, a Public Education Employee who seeks to teach in the secondary or adult education content area of mathematics shall meet the current state passing score for the PRAXIS I mathematics test. A Public Education Employee who seeks to teach in the secondary or adult education content area of English language arts shall meet the current state passing score for the PRAXIS I reading and writing tests.

3.2.6.2 An applicant in a Trade and Industry are shall pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the Initial License, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST or PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST or PRAXIS I scores or scores of acceptable alternatives sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

3.3 The Department shall not act on an application for licensure if the Public Education Employee is under official investigation by any state or local authority with the power to issue Public Education Employee

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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.

3.4 Trades and Industry Teacher Experience Requirements.

3.4.1 A bachelor's degree equivalent for a Trades and Industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. The requirement for two (2) years of college or technical training may be satisfied through the satisfactory completion of the requirements for any one or an appropriate combination of the following experiences in the area to be taught equaling:

3.4.1.1 An associate's degree with a major in the specific occupational area to be taught;

or

3.4.1.2 Two years of college majoring in the specific occupational area to be taught with at least 50% of the major courses required for a bachelor's degree satisfactorily completed; or

3.4.1.3 A state issued certificate indicating completion of apprenticeship hours and apprentice related training (e.g. journey papers); or

3.4.1.4 Four years of sequential Delaware Trade Extension courses; or

3.4.1.5 Four years of National Center for Construction Education and Research's Contren documented training; or

3.4.1.6 Nine high school credits of career and technical high school training; or

3.4.1.7 Passage of the State of Delaware Licensing test, offered through the Division of Professional Regulation; or

3.4.1.8 576 Hours of military training; or

3.4.1.9 576 Hours postsecondary trade school training; or

3.4.1.10 Completing the written and performance teacher testing for the National Occupational Competency Testing Institute with a minimum score set by the Department; or

3.4.1.11 DOE approved equivalents.

3.5 An Initial License is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an Initial License issued to a Public Education Employee in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

3.5.1 An Initial License issued to an applicant who is not currently employed by the Department or other employing authority shall be inactive until such time as a Public Education Employee is employed by the Department or other employing authority. Once employed, the Initial License shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the Trade and Industry areas which shall expire on the last day of the month of issuance six (6) years later.

3.5.2 During the term of the Initial License, license holders are required to participate in prescribed professional development activities offered by the Department or other employing authority.

3.6 Public Education Employees graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

3.7 The Department may extend an Initial License for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

3.7.1 A Public Education Employee whose license expires during the year may have the Initial License extended until the last day of the fiscal year upon a request from the Department or other employing authority. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

3.8 A Public Education Employee may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the Initial License.

3.9 A Public Education Employee shall disclose his or her criminal conviction history upon application for an Initial License. Failure to disclose a criminal conviction history is grounds for denial or revocation of an Initial License as specified in 14 Del.C. §1219.

3.10 The Secretary of Education may, at the request of the Department or other employing authority, review licensure credentials on an individual basis and grant a license to a Public Education Employee who otherwise does not meet the requirements for Initial License, but whose effectiveness is documented by the Department or other employing authority.

4.0 Issuance and Renewal of a Continuing License

In accordance with 14 Del.C. §121(c), the Department shall issue, upon application, a Continuing License to a Public Education Employee who has successfully completed the requirements under the initial licensure as set forth in 3.0. The Department shall issue a Continuing License to a Public Education Employee licensed in another jurisdiction that provides evidence of having completed three (3) or more years of successful teaching experience or other relevant educationally related experience. A Continuing License is valid for 5 years unless extended or revoked for cause.

4.1 A Public Education Employee applying for a Continuing License shall submit the approved application form to the Department. Verification by the Department or other employing authority of satisfactory annual evaluations shall also be submitted to the Department prior to the issuance of the Continuing License.

4.2 The Department shall not act on an application for a Continuing Licensure if the Public Education Employee 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.

4.3 The Department may issue a Continuing License to a Public Education Employee who previously held a valid Delaware License that has expired.

4.3.1 A Public Education Employee who has completed three (3) or more years of successful teaching or other relevant educational experience and who holds a Continuing License which has expired who has been out of the profession for more than three (3) years may be issued a Continuing License.

4.4 The Department shall renew a Continuing License, valid for an additional 5 years, to a Public Education Employee who has fulfilled the 90 clock hour requirement for professional development. At least one half of the required hours (45 hours every five years) for Public Education Employees shall be in activities that relate to the Public Education Employee's work with students or staff. Satisfactory evidence of such completion, as set forth in 4.4.1, shall be submitted to the Department with the application for renewal. The 90 clock hours of professional development shall have taken place during the term of the Continuing License.

4.4.1 Options for Relicensure

Table 1:

<u>OPTION</u>	<u>HOUR VALUE</u>	<u>VERIFICATION</u>	<u>CRITERIA</u>
College Credit	1 semester hour = 15 clock hours. 1 quarter hr. CEU = 10 clock hours.	Official Transcripts. Original Grade Slips. Original Certificate of Completion for CEUs.	Shall be completed at a regionally accredited college. Shall be taken for credit with grade of "C" or better or a "P" in pass or fail course.
"Clusters" of skills and knowledge. (Does not apply to DOE Staff Development) (Can be used for relicensure purposes only)	Verified clock hours in completion of cluster activities.	Approval Slip or Form Verifying Completion.	Cluster shall be prior approved by Professional Development and Associated Compensation Committee, the Professional Standards Board and the State Board of Education.
Planned professional development	Verified clock hours actively involved in professional development activities (Maximum of 45 Hours)	Certificate of Attendance provided by the sponsor of the professional development	Shall focus specific identified needs.

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Professional Conference or Workshop or Institute or Academy	Verified clock hours actively involved in workshop or conference sessions (Maximum of 45 Hours)	Original Certificate of Attendance or Completion or letter from Supervisor and Conference Staff. Copies and Exhibits of products developed by Public Education Employee. Course Attendance Slip	Shall include only time spent in those portions of the workshop or conference program that contribute to the Public Education Employee's knowledge, competence, performance, or effectiveness in education.
Intern Supervisor	Verified clock hours involved in support of the intern. (Maximum of 45 Hours)	Activity Documentation Form completed by Director of the Intern Program.	Shall be supervision of graduate or undergraduate intern.
Presentation	Verified clock hours preparing and presenting (Maximum of 45 Hours)	Activity Documentation Form	Shall include only actual time preparing and presenting a course, workshop, or presentation. (Clock hours limited to first preparation and presentation of individual course, workshop, or presentation.)
Educational Project	Verified clock hours completing project. (Minimum of 15 clock hours and Maximum of 45 Hours)	Activity Documentation Form	Shall obtain final verification after completion and verification.
Curriculum Assessment and Development	Verified clock hours of service. (Minimum of 3 clock hours Maximum of 45 Hours)	Original documentation from committee chair verifying actual clock hours of participation	Shall be service on formal committee organized by local, state, national, or international education agency or organization.
Educational Travel	Verified clock hours of experience. (Minimum of 15 clock hours per travel activity with a Final Project Maximum of 45 Hours)	Activity Documentation Form	Shall be prior approval by the Department or other employing agency.
Professional Programs or Committees	Verified clock hours of service or experience. (Maximum of 45 Hours)	Original documentation from committee chair or activity leader verifying actual clock hours of participation.	Shall be a formal activity provided through a recognized local, state, national, or international education agency or organization

Publication	30 clock hours for book. Up to 15 clock hours per other publication (Maximum of 45 Hours)	Copy of Publication or Document.	Shall contribute to the education profession or add to the body of knowledge in the individual's specific field. Shall be commercially published or a formally approved document or formally published in a medium sanctioned by a recognized state or national agency or organization. If a grant, shall be approved for funding.
NBPTS Certification or similar National Certification (Can be used for relicensure purposes only)	45 clock hours for attaining national certification Not complete, and then use verified clock hours completing portfolio activities. (Maximum of 45 Hours)	A Valid Copy of the National Certificate. For candidate not completing certificate, use the Activity Documentation Form.	Holds a certificate indicated by NBPTS as related to the Public Education Employee's work or assignment. Certificate or participation as a candidate shall be completed and verified by the expiration date of the Delaware certificate.

4.4.2 For renewal of the Continuing License, Public Education Employees may complete and document clock hours for the variety of activities described under relicensure options. When college or university courses are used to fulfill the requirements, the following equivalencies will be used: 1 semester hour = 15 clock hours, 1 quarter hour = 10 clock hours, 1 CEU = 10 clock hours. To be documented for clock hours, activities shall meet the criteria set forth in the regulations and shall be appropriately verified and applied for. Professional development activities that are part of an assistance plan may be used to satisfy this requirement. Individuals, schools or school districts, or other agencies organizing or conducting professional development activities which may be used for fulfilling the requirements for renewal of a license are responsible for providing documentation of participation to all participants. Each Public Education Employee is responsible for obtaining any necessary approvals, as set forth in 4.4.1, from his or her employer before participating in a professional development activity. An employer may not impose additional activity requirements on the award of clock hours towards renewal of a Continuing License.

4.4.2.1 Criteria for determining if activities are acceptable for clock hour credit for a Public Education Employee shall include the following:

4.4.2.1.1 The activity enhances the knowledge and skills in the Public Education Employee's job or contributes to his/her school or profession.

4.4.2.1.2 The activity meets one of the relicensure options.

4.4.2.1.3 The activity is completed during the term of the Public Education Employee's current Continuing License.

4.4.2.1.4 Participation in or completion of, the activity can be documented.

4.4.3 The Relicensure Application, Activity Documentation Form, and, where required, original or official documents shall be used to verify activities for renewal of a Continuing License. Official transcripts or original grade slips shall be required documentation for successful completion of college courses.

4.4.4 For applicants who change positions during the five year term of a Continuing License, clock hours documented shall have been appropriate to the Public Education Employee's position at the time the clock hours were completed.

4.4.5 To obtain renewal of a Continuing License, Public Education Employees shall be required to participate in professional development activities totaling 90 clock hours every five years. The 90 clock hours shall be completed during the five year term of the license.

4.4.5.1 Public Education Employees seeking renewal of a Continuing License may select from the variety of professional development options in 4.4.1. The activities selected shall be beyond the normal or specified requirements of the position. Professional development activities which fulfill the criteria for relicensure

for which Public Education Employees receive compensation may be submitted in fulfillment of the 90 clock hour requirement for relicensure. Graduate credits used to satisfy the 90 clock hour requirement for license renewal may, if part of a matriculated program, also be used for a salary increment on the state salary schedule. The activities or options used to satisfy the 90 clock hour requirement for license renewal may be part of an approved professional development cluster eligible for a salary supplement if the Public Education Employee is employed in Adult or Prison Education programs.

4.4.6 The Department may extend a Continuing License for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

4.4.7 A Public Education Employee may take a leave of absence of up to three years with no effect upon the validity or expiration of the Continuing License.

4.4.8 A Public Education Employee shall disclose his or her criminal conviction history upon application for a Continuing License.

4.4.9 A Public Education Employee whose license expires during the fiscal year may have the Continuing License extended until the last day of the fiscal year. This extension shall be considered an exigent circumstance and shall not exceed one (1) year in length.

4.4.10 The Secretary of Education may, upon the written request of the Department or other employing authority, review credentials submitted in application for a Continuing License on an individual basis and grant a Continuing License to an applicant who otherwise does not meet the requirements for a Continuing License, but whose effectiveness is documented by the Department or other employing authority.

5.0 Issuance and Renewal of an Advanced License

5.1 The Department, upon receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards, shall issue an Advanced License to any Public Education Employee who receives National Board for Professional Teaching Standards certification. An Advanced License is valid for up to 10 years or the length of time of the National Board Certification unless extended.

5.1.1 The Department shall issue, upon application, an Advanced License to a Public Education Employee licensed in another jurisdiction that provides verification of receipt of National Board Certification.

5.1.1.1 The Department shall not act on an application for licensure if the Public Education Employee is under official investigation by any state or local authority with the power to issue Public Education Employee 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.

5.2 The Department shall renew an Advanced License, valid for an additional 10 years, to a Public Education Employee who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board Certification shall be deemed to have been maintained if the Public Education Employee provides evidence of valid renewal of National Board for Professional Teaching Standards certification.

5.2.1 The Department shall renew an Advanced License upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.

5.2.2 An Public Education Employee who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board shall be issued a Continuing License.

5.2.3 The Department may extend an Advanced License for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

5.3 A Public Education Employee may take a leave of absence of up to three years with no effect upon the validity or expiration of the Advanced License.

5.4 A Public Education Employee shall disclose his or her criminal conviction history upon application for an Advanced License.

6.0 Standard Certificate

The Department shall issue a Standard Certificate to a Public Education Employee who holds a valid Delaware Initial, Continuing or Advanced License; or Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003.

6.1 The Public Education Employee shall have acquired the prescribed knowledge, skill or education

to practice in a particular area, to teach a particular subject, supervise a particular area at the Department or teach a particular category of students by:

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

6.1.2 Meeting the definition of a Public Education Employee in 2.0 and the requirements set forth in 6.1 or 7.0 or the regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or

6.1.3 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 NASTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in the area of the standard certificate requested; or

6.1.4 Holding a Bachelor's Degree from a regionally accredited college or university in any content area; and

6.1.4.1 Achieving a passing score, as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on a Praxis II examination where applicable and available in the area requested, or

6.1.5 A valid and current educator certificate from Delaware or another state in the area for which a Standard Certificate is sought.

6.2 Public Education Employees May hold Standard Certificates in more than one area.

6.3 The Department shall not act on an application for certification if the Public Education Employee 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.

6.4 A Public Education Employee applying for a Standard Certificate shall submit Official transcripts; or official scores on the Praxis II examination, if applicable and available, or evidence of passage of the National Board for Professional Teaching Standards Certificate; or an official copy of the out of state license or certification, if applicable or other relevant experience in a private or public educational agency or institution.

6.4.1 If applied for simultaneously with application for an Initial License, the Public Education Employee shall provide all required documentation for that application in addition to the documentation cited above.

6.5 If a Public Education Employee holds a valid Initial, Continuing, or Advanced Delaware License as an educator; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and becomes employed as a Public Education Employee, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the relevant Standard Certificate requested shall be required.

6.6 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 Public Education Employee's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked in accordance with 10.0. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Department.

6.7 The Secretary of Education may, upon the written request of the Department 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 Department or other employing authority.

7.0 Certification Requirements for Those Public Education Employees Working in Adult Education Programs

7.1 In addition to the requirements in 6.0, a Public Education Employee teaching in Adult Education Programs shall hold a Bachelor's degree in Adult, Elementary, or Secondary Education from a regionally accredited college or university and meet one of the following specialized Adult Education preparation or experience requirements.

7.1.1 Satisfactory completion of six (6) semester hours of college level course work in adult education from an accredited college or university or.

7.1.2 Completion of six (6) approved courses or clusters in Adult Education under higher

education or state education agency sponsorship or.

7.1.3 Completion of three (3) approved Adult Education credits and two (2) years of documented satisfactory internship or employment as a teacher, counselor, or administrator in an approved Adult Education program as documented by the program administrator.

7.1.4 A teacher of adults with special needs shall meet the requirements in 7.1 plus one college level course in the education of exceptional students and one year of documented satisfactory employment as a teacher, counselor or administrator in a program for exceptional students.

7.2 A Public Education Employee serving as an administrator in an Adult Education Program shall hold a Master's Degree from a regionally accredited college or university and complete a minimum of three years of successful full time or part time experience in an adult education setting working as an administrator, coordinator or teacher. One year of the three years may be as an administrator in an alternative education or non traditional educational setting as long as the program is regularly organized and supported by State or federal funds. The Public Education Employee shall also complete 18 semester hours or its equivalent within a Master's degree program or in addition to a Master's Degree program of courses directly related to adult education and the adult learner.

7.3 A Public Education Employees working in Adult Education Programs as a classroom aide shall complete two (2) approved inservice credits in Adult Education or have staff development activities under the sponsorship of the Department or a higher education institution in addition to a high school diploma or GED.

8.0 Certification Requirements for Those Public Education Employees Working at the Department of Education.

In addition to the requirements in 6.0, persons employed by the Department of Education shall be certified by the Department for the position they hold at the Department.

9.0 Denial of Licenses and Certificates

9.1 The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate to an applicant upon a finding that the applicant fails to meet the statutory or regulatory requirements for a license or certificate.

9.1.1 Upon a finding that an applicant is unfit to be licensed or certified in the State, the Department may refuse to issue an Initial License, Continuing License or an Advanced License or a Standard or Emergency Certificate to an applicant who otherwise meets the requirements set forth herein.

9.1.2 Notwithstanding any other provisions stated herein no license or certificate shall be issued to an applicant for an Initial, Continuing or Advanced License or Standard or Emergency Certificate if:

9.1.2.1 There is legal evidence that the applicant is not of good moral character; or

9.1.2.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, and willful neglect of duty, disloyalty or falsification of credentials.

9.1.3 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 within ten (10) days.

10.0 Revocation of Licenses and Certificates

10.1 An Initial, Continuing or Advanced License may be revoked upon the dismissal of the licensee or certificate holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, or upon the license holder's resignation or retirement pending dismissal for immorality, provided that clear and convincing evidence establishes the underlying misconduct, and shall be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

10.1.1 When any license or certificate holder is dismissed for immorality, the employing authority making such a determination shall, upon final decision, give written notice to the Associate Secretary for Assessment and Accountability.

10.1.2 When any license or certificate holder is dismissed for misconduct in office, incompetence, willful neglect of duty or disloyalty, the employing authority making such a determination may, upon final decision, give written notice to the Associate Secretary for Assessment and Accountability of its desire to request the revocation of that individual's license or certificate.

10.1.3 When a license or certificate holder resigns employment or retires pending dismissal for

immorality the employing authority upon accepting the resignation or retirement, shall give written notice to the Associate Secretary for Assessment and Accountability.

10.1.4 Upon receipt of written notification from the employing authority, the Associate Secretary for Assessment and Accountability shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary within thirty (30) days.

10.1.5 The Associate Secretary for Assessment and Accountability may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that clear and convincing evidence establishes that any of the following circumstances exist:

10.1.5.1 The license or certificate holder has been convicted of a crime which is evidence of immorality;

10.1.5.2 The license or certificate holder who is not employed by a public school district or charter school or other employing authority has resigned his/her employment or retired pending dismissal for immorality; or

10.1.5.3 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty or falsification of credentials.

10.1.6 If the licensee fails to request a formal hearing before the Secretary within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 314 and 320

PUBLIC NOTICE

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

314 Certification Administrative Principal or Assistant Principal Administrator of Adult and Adult Alternative Education 320 Certification Adult Education Teacher

The Secretary seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 314 Certification Administrative Principal or Assistant Principal, Administrator of Adult and Adult Alternative Education and 14 DE Admin. Code 320 Certification Adult Education Teacher because the new regulation 14 DE Admin. Code 284 Licensure and Certification of Public Education Employees in the Department of Education, in Adult Education and in Prison Education Programs Whose Work Responsibilities are Directly Related to Curriculum and Instruction addresses the issues contained in these regulations.

~~**314 Certification Administrative Principal or Assistant Principal Administrator of Adult and Adult Alternative Education**~~

~~Effective July 1, 1993~~

~~**4.0 The following shall be required for the Standard License.**~~

~~4.1 Degree required~~

~~4.1.1 Master's degree from a regionally accredited college and,~~

~~4.2 Experience~~

~~4.2.1 A minimum of three years of successful, full time or full time part time experience in an adult educational setting, working as an administrator, coordinator, counselor or teacher. One year of the three~~

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years may be experience in an alternative education or non traditional educational setting, as long as the program is regularly organized and supported by state and federal funding and,

1.3 Specialized Professional Preparation

1.3.1 Completion of one course in each of the areas listed below. Coursework may be taken either within or in addition to the Master's degree or as part of a Department of Education preapproved inservice program in adult education. The total number of credits required, independent of the type of course, is twenty one semester hours or its equivalent.

- 1.3.1.1 Adult Learning and the Adult Learner
- 1.3.1.2 Organization and Administration of Adult Education Programs
- 1.3.1.3 Program Planning and Development (Curriculum) in Adult Education
- 1.3.1.4 Program Evaluation in Adult Education
- 1.3.1.5 Financial Management
- 1.3.1.6 Human Relations
- 1.3.1.7 Evaluation and Supervision of Staff
- 1.3.1.8 Legal Issues in Education

2.0 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 employed in the above position to allow for the completion of the requirements for the Standard License as listed in 1.0.

- 2.1.1 Master's degree from an accredited college and,
- 2.1.2 Meets requirements of 1.2 and,
- 2.1.3 Within six semester hours of meeting the requirements in 1.3.

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

~~320 Certification Adult Education Teacher~~

Effective July 1, 1984

~~1.0~~ The following shall be required for a Standard License for teachers of Adult Education (basic and general) including literacy education, preparation for naturalization, adult basic, general adult education including academic and cultural education:

- 1.1 Degree requirements
 - 1.1.1 Bachelor's degree in Adult, Elementary, or Secondary Education from an accredited college and,
- 1.2 Specialized Adult Education preparation and/or experience requirements
 - 1.2.1 Satisfactory completion of six (6) semester hours of college level course work in adult education from an accredited college or university or,
 - 1.2.2 Completion of six (6) approved in service credits in Adult Education under higher education or state education agency sponsorship or,
 - 1.2.3 Completion of three (3) approved Adult Education credits and two (2) years of documented satisfactory internship or employment as a teacher, counselor, or administrator in an approved Adult Education program as documented by the program administrator.

~~2.0 Teacher of Adult Education~~

~~Teacher of Adult Education/Secondary (High School Level subjects) shall meet the same requirements as for Secondary Education areas in addition to specialized requirements listed in 1.2.~~

~~3.0 Teacher of Adults with Special Needs~~

~~Teacher of Adults with Special Needs shall meet the requirements for adult education certification, plus one college level course in the education of exceptional students and one year of documented, satisfactory employment as a teacher, counselor, or administrator in a program for exceptional students.~~

~~4.0 Teacher Aides/Adult Education~~

~~4.1 Qualifications same as for other teacher aides, except that a document of Endorsement of Secondary Attainment (GED) may satisfy a secondary educational requirement.~~

4.2 ~~Specialized preparation required: Completion of two (2) approved in-service credits in adult education or in staff development activities for paraeducator under higher education or state education agency sponsorship.~~

~~**5.0 Licenses That May be Issued for This Position Include Standard and Limited Standard.**~~

5.1 ~~The Limited Standard license may be issued upon request of a Delaware public school district for a teacher employed for this position who meets the standards as set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 503

PUBLIC NOTICE

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

503 Instructional Program Requirements

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 503 Instructional Program Requirements in order to comply with House Bill 372 enacted by the 143 General Assembly as it amends 14 Del.C. 122(b) (23). The legislation states that the Department of Education is to require each local school district and charter school to assess the physical fitness of all students at least once in elementary, in middle and in high school.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation requiring a physical fitness assessment may contribute to student achievement through improved health and fitness.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation requires a physical fitness assessment it does not address equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation requires a physical fitness assessment which may contribute to improving students' health.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation requires a physical fitness assessment it does not address 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 require additional reporting requirements at the school level.

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The state will provide the assessment instrument and will process the data gathered.

503 Instructional Program Requirements

1.0 English Language Arts

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K to 12.

1.2 All public school students in each grade K to 8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9 to 12 shall complete the credits in English language arts necessary to graduate from high school.

2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K to 12.

2.2 All public school students in each grade K to 8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9 to 12 shall complete the credits in mathematics necessary to graduate from high school.

3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K to 12.

3.2 All public school students in each grade K to 8 shall be enrolled in a science program.

3.3 All public school students in grades 9 to 12 shall complete the credits in science necessary to graduate from high school.

4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K to 12.

4.2 All public school students in each grade K to 8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9 to 12 shall complete the credits in social studies necessary to graduate from high school.

5.0 Physical Education

5.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K to 12 with the exception of the James H. Groves High School program.

5.2 All public school students in each grade 1 to 8 shall be enrolled in a physical education program.

5.3 All public school students in grades 9 to 12 shall complete the credit in physical education necessary to graduate from high school.

~~5.4~~ 5.3.1 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

~~5.5~~ 5.4 The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district or charter school shall have the authority to grant such waivers. The local school district or charter school shall maintain records of the waivers granted and upon request, make them available for review consistent with Federal and state confidentiality laws.

5.5 Local school districts and charter schools shall annually assess the physical fitness of each student in grades 4 and 7, and in grade 9 or 10. Beginning in the 2006-2007 school year and annually thereafter, all students in grade 4 will be assessed. Beginning in the 2007-2008 school year and annually thereafter all students in grade 7 and in grade 9 or 10 will be assessed. The physical fitness assessment tool used by the districts and charter schools shall be one designated by the Delaware Department of Education.

5.5.1 The local school districts and charter schools shall provide the results of the physical fitness

assessment to the parent(s) guardian(s) or Relative Caregiver of each student. The districts and charter schools shall also report this information to the Delaware Department of Education in a format determined by the Department.

5.5.1.1 The Delaware Department of Education shall annually report the statewide grade level results of the physical fitness assessment to the public.

6.0 Visual and Performing Arts

6.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K to 12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1 to 6 shall be enrolled in a visual and performing arts program.

7.0 Career Technical Education

7.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

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

8 DE Reg. 1709 (6/1/05)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 915

PUBLIC NOTICE

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

915 James H. Groves High School

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 915 James H Groves High School to bring the regulation in line with 14 DE Admin. Code 505 concerning the number of courses required for graduation. Amendments also add definitions and address changes in current practice and clarify some of the language.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards by providing opportunities for older students to complete their high school education.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure that all students receive an equitable education because the Groves students will have to meet the same standards as students in regular high school programs.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses academic requirements not health and safety issues.

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

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

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

school levels.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be additional costs to the State and to the local school boards in order to hire additional staff to teach the additional courses required for graduation.

915 James H. Groves High School

1.0 Administration Definitions

“Certificate of Educational Attainment (CEA3)” means that the holder of the certificate has passed the Official GED Practice Test with a score of 2450 or better with no less than 470 in each sub test area and has written a Groves approved content area research paper.

“Department” means the Delaware Department of Education

The “James H. Groves High School” or “Groves” is means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

“James H Groves Center” or “Center(s)” means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

“Groves Leadership Team” means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and a prison education teacher supervisor. The Associate Secretary, Adult Education and Work Force Development shall be an ex officio member of the leadership team.

2.0 Admission Criteria.

The following individuals may enroll in the James H. Groves High School:

~~2.1 Adults, 18 years of age and older, who reside in the State of Delaware or who have worked in Delaware for a minimum of one year.~~

~~2.2 Out of school youth, 16 to 21, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending.~~

~~2.3 Non-residents who otherwise meet the eligibility requirements set forth in 2.1 and 2.2.~~

~~2.4 High school students who are at least 16 years of age and enrolled for at least one credit in their home school may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their home high school.~~

~~2.4.1 To enroll in this program, students shall have the permission of their home high school, their parent or guardian and the Groves High School principal or designee.~~

~~2.4.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their home high school.~~

~~2.4.3 Students who withdraw from their home high school and transfer to the Groves High School shall no longer be considered as a student in the Groves In School Credit Program and will be assessed the materials fee for that semester.~~

~~2.5 Individuals expelled from a local school district may not be enrolled in Groves High School without a waiver from the Delaware Department of Education for the duration of the expulsion. Individuals who enroll~~

~~without a waiver will lose credits earned during the expulsion period.~~

~~2.5.1 An applicant for a waiver must: be at least 17 years of age (except from September 1, 1998 through July 1, 1999 when 16 year olds may also apply), intend to graduate from the James H. Groves High School, be expelled for a nonviolent reason, not be a security threat, demonstrate interest in learning and state specific ways to be a successful student.~~

~~2.1 An adult 18 years of age and older, who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of six months prior to enrollment.~~

~~2.1.1 The applicant shall:~~

~~2.1.1.1 Submit an application on forms approved by the Department;~~

~~2.1.1.2 Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.~~

~~2.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.~~

~~2.2.1 To apply for an age waiver, the prospective student must submit a letter of request for admission to the State Director of Adult Education with the rationale for granting a waiver with a letter of recommendation from the high school of record.~~

~~2.2.2 The prospective student seeking the waiver shall also meet the admission process of all other enrollees.~~

~~2.2.3 The decision regarding admission shall be made by the Center administrator.~~

~~2.3 High school students who are at least 16 years of age and enrolled for at least one credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record.~~

~~2.3.1 To enroll in this program, students shall have the permission of their high school of record, their parent(s), guardian(s) or Relative Caregiver and the Groves High School principal or designee.~~

~~2.3.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.~~

~~2.3.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.~~

~~2.4 Individuals expelled from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.~~

~~2.4.1 An applicant for a waiver shall:~~

~~2.4.1.1 Be 16 or 17 years of age;~~

~~2.4.1.2 Intend to graduate from the James H Groves High School;~~

~~2.4.1.3 Be expelled for a nonviolent reason and not be a security threat;~~

~~2.4.1.4 Submit a letter of recommendation signed by the principal of their high school of record; and~~

~~2.4.1.5 Meet the requirements in 2.1.1.~~

~~3.0 Acceptable Methods for Earning High School Units of Credit~~

~~The following methods or any combination of the following methods are acceptable:~~

~~3.1 Course Enrollment, courses are offered in a classroom or distance setting.~~

~~3.2 Correspondence Study, approved courses offered through accredited correspondence schools are accepted for high school credit.~~

~~3.3 Summer School, approved courses offered through summer school are accepted for high school credit.~~

~~3.4 Distance Learning, approved courses offered through accredited distance learning programs are accepted for high school credit.~~

~~3.5 Independent Study, courses offered through independent study must be assigned an instructor who will monitor the progress of the student. The content will be the same as required in the course enrollment.~~

~~3.6 Achievement Testing, credits are awarded through achievement testing based on the content demonstrated. Approved tests used to award credit are standardized and specifically designed to determine the~~

level of student competence.

~~3.7 Employment or Training Experience, credit for employment or training experience will be evaluated to determine the number of credits that will be awarded based on length of employment, level of job responsibility and scope of work.~~

~~3.8 Career Technical Courses, upon satisfactory completion of approved Career Technical, vocational or apprenticeship courses, units of credit will be awarded.~~

~~3.9 Military Experience, veterans may be granted credit based on military training and experience.~~

~~3.10 Higher Education Courses, higher education courses will be awarded credit as designated by other Delaware Department of Education policy.~~

~~3.11 Foreign School Attendance, credit for courses completed in schools in foreign countries will be evaluated in terms of equivalent content to Delaware high school graduation requirements.~~

~~3.12 Prior High School Credits, any high school credit earned by the student may be transferred into Groves and become part of the transcript toward graduation.~~

~~3.13 Community Service, the community service unit of credit is designed to recognize the community life experiences of the student and to encourage the student to assume civic responsibility. The emphasis is upon volunteer service given freely for the betterment of the community and other persons.~~

~~3.14 Internships, internships are designed to provide practical real life experiences for students. Credit may be earned based on the skills and the length of time of the experience.~~

~~3.15 Certificate of Educational Attainment (CEA3), the CEA3 enables a student to demonstrate high school level skills through a written test. By passing the Official GED Practice Test with a score of 2450 or better with no less than 470 in each sub-test area and writing a Groves approved content area research paper, students are awarded 10 units of credit toward graduation.~~

3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma

3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:

3.1.1 High school classroom courses;

3.1.2 Summer school courses offered through a district or charter school;

3.1.3 Groves classroom courses;

3.1.4 Distance learning courses;

3.1.5 Independent study courses;

3.1.6 Correspondence courses;

3.1.7 Courses completed through schools in foreign countries and evaluated in terms of content equivalent to the State's high school graduation requirements;

3.1.8 Career technical courses and apprenticeship courses;

3.1.9 Higher education courses;

3.1.10 Internships designed to provide practical real life experiences and based on the skills gained and the length of time of the experience;

3.1.11 Military Experience based on military training and experience;

3.1.12 Employment or training experience based on the length of employment, the level of job responsibility and the scope of work;

3.1.13 Community Service that recognizes the community life experiences of the student and encourages the student to assume civic responsibility. The emphasis is upon volunteer service within a non-profit or governmental agency given freely for the betterment of the community and other persons and is based on verification of length of service;

3.1.14 The knowledge assessments created by the Groves teachers for students to demonstrate their knowledge of course content; and

3.1.15 The Certificate of Educational Attainment (CEA3) that provides 10 units of credit toward graduation.

4.0 Attendance, Grading and Graduation Criteria

4.1 Students enrolled in James H. Groves High School courses shall develop a graduation plan

4.1 ~~2~~ Students ~~attending~~ enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours in order to receive a unit of credit. No provision is made for excused absences.

4.2 ~~3~~ The grading system for the James H. Groves High School shall be based on a 100 point numeric scale. An alpha conversion chart to determine level of performance shall be:

4.2.1 ~~93 to 100~~ Students receiving a grade of "A" ~~(93 to 100)~~ have demonstrated ~~demonstrate~~ superior understanding of the content and have demonstrated knowledge and competence at the highest level.

4.2.2 ~~85 to 92~~ Students receiving a grade of "B" ~~(85 to 92)~~ have a ~~demonstrate~~ better than average understanding of the content and have demonstrated above average knowledge and competence.

4.2.3 ~~75 to 84~~ Students receiving a grade of "C" (75 to 84) have a ~~demonstrate~~ satisfactory understanding of the content and have demonstrated knowledge and competence.

4.2.4 ~~Less than 75 no credit awarded~~ No credit is awarded for grades less than 75.

4.3 ~~James H. Groves High School graduates shall meet the state graduation requirements with the exception of physical education which is waived in lieu of another credit.~~

4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements in effect at the time of their graduation. (See 14 DE Admin. Code 505.2, 3.1 or 5.0). The single exception is physical education which is waived in lieu of another credit.

4.3.1 ~~All course content shall reflect the state content standards shall be based on the State Content Standards.~~

5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

6.0 Students Rights and Responsibilities

Students enrolled in each center Center shall have such rights and be subject to such responsibilities as set forth in the ~~document the James H. Groves Student Rights and Responsibilities~~ James H. Groves Student Rights and Responsibilities document, and as such may be amended from time to time by the ~~Delaware Department of Education~~.

7.0 Establishing a Center

7.1 A school district, agency or organization may seek to establish a James H. Groves Center ~~in their for service delivery area~~ by following the process outlined below. No district, agency or organization shall have more than one Groves Center.

7.1.1 An affiliation ~~must~~ shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot center Center.

7.1.2 After a two year affiliation as a satellite center Center of an existing Groves Center or two year success as a pilot center Center, ~~a formal request may be made to the Delaware Department of Education for full center status.~~ the Department may grant full Center status to the satellite site or the pilot Center.

7.1.2.1 A formal request for full Center status shall be made to the Department at the end of year one as a satellite or pilot Center. The request shall include:

7.1.3 ~~A formal request for center status may be made after at the end of year one year as satellite or pilot center site and must be made one year prior to the desired start up date. The request must include:~~

~~7.1.3.1~~ 7.1.2.1.1A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing centers Centers, and rationale for requesting a Groves Center;

~~7.1.3.2~~ 7.1.2.1.2A description of the district, agency or organization's experience and success in adult program delivery;

~~7.1.3.3~~ 7.1.2.1.3An explanation of the commitment to the Groves adult education program and assurances;

~~7.1.3.4~~ 7.1.2.1.4Budget requirements including in kind contributions;

7.1.2.1.5 Submission of an annual performance report; and

7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth

month of the first year.

7.1.4 ~~7.1.3~~ District, ~~Agency or Organization~~ The district agency or organization

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representatives ~~will~~ shall meet with the Groves Leadership Team to review the Center request.

~~7.1.5 7.1.4~~ 7.1.4 The Groves Leadership Team ~~will~~ shall make a recommendation for ~~center~~ Center status to the Delaware Department of Education, Education Associate through the Department's Director for Adult Education to the Secretary of Education.

~~7.1.6 7.1.5~~ 7.1.5 Approval or denial ~~will~~ shall be ~~made~~ communicated to the district, agency or organization by the Department within 60 days of ~~the center~~ Center status application.

~~7.1.7 7.1.6~~ 7.1.6 If approved, the Delaware Department of Education ~~will~~ shall apply for ~~center~~ Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full ~~center~~ Center status ~~will~~ shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.

~~7.1.8 7.1.7~~ 7.1.7 Appeal Process: In the event Center status is denied by the Department of Education a hearing ~~can~~ may be requested by the district, agency or organization. The hearing ~~will~~ shall be conducted by the ~~Department of Education~~ Secretary of Education or his or her designee.

8.0 Closing a Center

8.1 Voluntary Closing: A school district, agency or organization ~~may~~ shall close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district, agency or organization ~~must~~ shall announce by November its intention to discontinue service at the end of the fiscal year. The following steps ~~will~~ shall be followed:

8.1.1 Within two months of closing, the district, agency or organization ~~must~~ shall:

8.1.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center. Records of active students ~~must~~ shall be sent to the new Center;

8.1.1.2 Provide all current and past student and administrative records to the ~~Delaware~~ Department of Education;

8.1.1.3 Send all equipment purchased for the Center to the ~~Delaware~~ Department of Education or to the designated ~~centers~~ Centers for redistribution; and

8.1.1.4 Return ~~any~~ unspent funds to the ~~Delaware~~ Department of Education.

8.1.2 District, agency or organization representatives ~~will~~ shall meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

9.0 ~~Nonvoluntary~~ Non Voluntary Closing

9.1 A ~~nonvoluntary~~ non voluntary closing ~~will~~ shall be made by the Secretary of Education when:

9.1.1 There is insufficient enrollment or graduates to sustain a Center; or

9.1.2 The Center does not follow the policies, procedures, rules, regulations or instructional program set forth for the James H. Groves High School; or

9.1.3 The ~~Delaware Department of Education~~ Secretary of Education determines the Center is not providing a quality instructional program to the students at that ~~center~~ Center.

~~9.1.3.1 9.2~~ 9.2 The ~~Delaware Department of Education~~ Secretary of Education ~~will~~ shall provide notice to the school district, agency or organization of the closing by November giving eight months to close the Center. ~~The following steps will be followed:~~

~~9.1.3.1.1 9.2.1~~ 9.2.1 Within two months of closing, the district, agency or organization ~~must~~ shall:

~~9.1.3.1.1.1 9.2.1.1~~ 9.2.1.1 Notify all current students of the ~~center~~ Center closing and provide them with information to transfer to another ~~center~~ Center. ~~Records of active students must be sent to the new Center;~~

~~9.1.3.1.1.2 9.2.1.2~~ 9.2.1.2 Provide all current and past student and administrative records to the ~~Delaware~~ Department of Education;

~~9.1.3.1.1.3 9.2.1.3~~ 9.2.1.3 Send all equipment purchased for the ~~center~~ Center to the ~~Delaware~~ Department of Education or to the designated ~~centers~~ Centers for redistribution; and

~~9.1.3.1.1.4 9.2.1.4~~ 9.2.1.4 Return ~~any~~ unspent funds to the ~~Delaware~~ Department of Education.

~~9.1.3.1.2 9.3~~ 9.3 The ~~D~~district, agency or organization representatives ~~will~~ shall meet with the James H. Groves Leadership Team at the monthly meetings to implement a smooth closing.

2 DE Reg. 378 (9/1/98)

5 DE Reg. 1285 (12/1/01)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1579

PUBLIC NOTICE

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

1579 Standard Certificate Teacher of the Visually Impaired

A. Type of Regulatory Action Requested

New Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to adopt 14 DE Admin. Code 1579 Standard Certificate Teacher of the Visually Impaired. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to adopt this regulation because it previously was incorporated into 14 DE Admin. Code 1562 Standard Certificate Teacher Exceptional Children Special Education/Secondary, which is being repealed. Working with the Division of Visual Impairment, it was determined that a separate regulation was appropriate. This regulation sets forth the requirements for a Teacher of the Visually Impaired.

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,

PROPOSED REGULATIONS

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.

1579 Standard Certificate Teacher of the Visually Impaired, Birth to Age 21

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Teacher of the Visually Impaired, Birth to Age 21. This regulation does not apply to Orientation and Mobility Specialists who are certified by the Academy of Certification of Vision Rehabilitation and Education Professionals.

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 to fifteen (15) hours taken either as part of a degree program or apart from 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

In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Teacher of the Visually Impaired, Birth to Age 21, 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, 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 educating Visually Impaired Students; 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, satisfactorily completing a minimum of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.1.5 A minimum of fifteen (15) graduate or undergraduate credits from a regionally accredited college or university, taken either as part of a degree program or apart from it, to include:

3.1.5.1 Anatomy and Physiology of the Eye;

3.1.5.2 Braille and Nemeth Code, preferably including instruction in Braille;

3.1.5.3 Orientation/Mobility for the Teacher of the Visually Impaired;

3.1.5.4 Education for the Visually Impaired;

3.1.5.5 Assistive Technology; or

3.1.5.6 Diagnosis/Assessment/IEP Development.

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 Visually Impaired;

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 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,

PROPOSED REGULATIONS

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.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

FOOD STAMP PROGRAM

Household Definition

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the definition of household.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by October 31, 2006.

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

Summary of Proposed Change

Statutory Authority

7 CFR 273.12, *Requirements for Change Reporting Households*

Summary of Proposed Change

DSSM 9013.1, *Household Definition*: DSS is making the change to allow parents who provide a majority of their children's meals each month to get food stamp benefits when the children have been getting benefits with the other parent. Currently, the parent who provides the majority of the meals cannot get food stamp benefits for the children if they are already opened in the other's parent's case.

DSS PROPOSED REGULATION #06-39

REVISION:

9013.1 Household Definition

A) General Definition a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

B) Special Definition the following individuals living with others or groups of individuals living together must be considered as customarily purchasing food and preparing meals together, even if they do not do so*.

1. Spouses who live together. Spouse refers to either of two individuals:
 - a. Who would be defined as married to each other under applicable State law; or
 - b. Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

* Same sex couples, for food stamp purposes, are not considered spouses and the presumption of purchasing food and preparing meals together would not apply to them.

2. Children 21 years of age and younger living with their parents. [Parents are defined as natural parent(s), adoptive parent(s), or step-parent(s)]

Children (other than foster care children) who are under 18 and live under the parental control of a non-parent, adult household member cannot be separate households.

Adult children (22 years of age and older) who live with their parents can be separate households if they purchase and prepare food separately.

3. Child(ren) living with a non-parent who has legal custody of the child(ren) will continue to be a member of the household for food stamp purposes even if a natural parent moves into the home. The non-parent must provide proof of legal custody. If the adult who has legal custody of the child chooses to let the child and natural parent purchase and prepare meals together, the child can become a member of the natural parent's food stamp household.

4. Joint custody – Children who live with parents in a joint custody situation can get food stamps with the parent who is the first to apply for food stamps. If both parents are applying for the same child(ren), the parent who provides the majority of the meals (21 meals a week) will include the child as part of his/her food stamp household.

When the parent who provides the majority of the meals applies for food stamps after the other parent is already getting food stamps for children, he/she can include the children their food stamp after they are removed from the other parent's case. The children are removed from the first parent's case and opened in the second parent's case no later than the second month after the month the second parent requests food stamps for the children.

PROPOSED REGULATIONS

5. When an individual resides a portion of the month with a food stamp household, the household can choose to include or exclude the individual from the food stamp household. If included, the income of the individual must be included and the individual cannot get benefits in another household or state.

Examples:

- A son works out of state but comes home every weekend. His mom can include or exclude him.
- A child lives in PA with her father. She comes to DE to live with her mom on weekends. Her mother can include her in her food stamp household as long as the child is not getting food stamps in PA.
- A child goes to a residential school and comes home every other weekend and holidays. The parents can include the child in their food stamp household.

6. Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of the above general definition, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because (s)he suffers from a disability considered permanent under the Social Security Act, or suffers from a non-disease-related, severe, permanent disability, may be a separate household from the others based on the provisions of this section provided that the income (all income under DSSM 9055) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line. Only the spouse of the elderly and disabled individual is required to be included in the same household with the individual.

"Elderly or disabled member" means a member of a household who:

- a. is 60 years of age or older;
- b. receives Supplemental Security Income (SSI) benefits under Title XVI of Social Security Act or disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act;
- c. receives federally or State administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive benefits is based upon the disability or blindness criteria used under Title XVI of the Social Security Act;
- d. receives federally or State administered supplemental benefits under section 212(a) of Public Law 93 66;
- e. receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;
- f. is a veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under Title 38 of the United States Code;
- g. is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
- h. is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self support under Title 38 of the United States Code; or
- i. is a surviving spouse or surviving child of a veteran and is considered by the VA to be entitled to compensation for service connected death or pension benefits for a non service connected death under Title 38 of the United States Code and has a disability considered permanent under Section 221(i) of the Social Security Act;
- j. received an annuity payment under Section 2(a)(l)(iv) of the Railroad Retirement Act of 1974 and is determined to be eligible to receive Medicare by the Railroad Retirement Board, or Section 2(a)(i)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under Title XVI of the Social Security Act.
- k. is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, disability related medical assistance under Title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under Title XVI of the Social Security Act.

"Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

Note: Some disabled persons optionally receive Federal Employee Compensation Act (FECA) payments in lieu of Civil Service Disability payments. Such persons are considered to meet the disability definition under this section. Some persons, however, receive FECA payments on a temporary basis while recovering from an on-the-job injury. Receipt of these temporary payments does not satisfy the disability definition. Therefore, verify which type of FECA payment a client receives.

VERIFICATION OF DISABILITY

DISABILITY BASIS

VERIFICATION METHOD

- | | |
|---------|--|
| b ,c, d | Household must provide proof of benefit receipt. |
| f | Household must present a statement from the Veterans Administration which clearly indicates (1) that the disabled individual is receiving VA disability benefits for a service- connected disability, and (2) that the disability is rated as total or paid at the total rate. |
| g, h | Household must prove that the disabled individual is receiving VA disability benefits. |
| e, i | Use SSA's most current list of disabilities considered permanent. If it is obvious that one individual has one of the listed disabilities, the item is considered verified. If disability is not obvious, the household must provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the non-obvious disabilities listed. |
| j | Household must provide proof that individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board <u>and</u> has been determined to qualify for Medicare. |
| k | Household must provide proof of receipt of interim benefits pending receipt of SSI; or disability-related medical assistance under Title XIX of the SSA. Verify that the eligibility to receive these benefits is based upon disability or blindness criteria that are at least as stringent as those used under title XVI of the Social Security Act. |

9 DE Reg. 1077 (01/01/06)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903 (7 Del.C. §903)
7 DE Admin. Code 3536

REGISTER NOTICE SAN # 2006-18

1. **Title of the Regulations:**
Tidal Finfish Regulations

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

The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management Board adopted a compliance requirement at the August 2005 meeting stipulating that all states in the management regime (Massachusetts through North Carolina) for Black Sea Bass include language in their regulations, by January 1, 2007, that require at least two escape vents in the parlor section of all fish pots used to harvest Black Sea Bass. In addition, the Board stipulated that all circular vents used in fish pots must be at least 2.5 inches in diameter to allow escapement of sub-legal size fish. The Mid Atlantic Fishery Management Council and the ASMFC sponsored a workshop on March 22, 2005 to generate discussion and recommendations on whether the current vent sizes used are appropriate for scup and black sea bass pots and traps. Workshop

participants recommended that circle vents increase in size to 2.5 inches and that rectangular and square vent sizes remain unchanged. They also recommended that each pot/trap have at least two escape vents in the parlor portion of the trap. In general the workshop group agreed that these changes would increase the escapement of sub-legal fish. The Board and Council adopted the workshop recommendations at the August 2005 meeting and in order to allow industry adequate time to make the proper gear changes the effective date was delayed until January 1, 2007. The Board specified that these gear changes would be compliance requirements that must be implemented through out the management regime (Massachusetts through North Carolina) for black sea bass by January 1, 2007.

3. Possible Terms of the Agency Action:

Delaware is required to comply with specific Fishery Management Plans approved by the ASMFC. Failure to do so could result in complete closure of a specific fishery in Delaware.

4. Statutory Basis or Legal Authority to Act:

7 Del.C. §903, 7(e)(2)(a)

5. Other Regulations That May be Affected by the Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, (302) 739-9914. A public hearing on these proposed amendments will be held on October 24, 2006 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway. Dover, DE 19901. The record will remain open for comments until 4:30 PM October 27, 2006.

7. PREPARED BY:

Richard Cole (302) 739-4782 Aug. 30, 2006

3536 Fish Pot Requirements (Formerly Tidal Finfish Reg. 24)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has ~~an~~ two escape vents placed in ~~a lower corner of~~ the parlor portion of said pot which complies with one of the following minimum sizes: 1.375 inches by 5.75 inches; or a circular vent ~~2.375~~2.5 inches in diameter; or a square vent with sides of 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.375 inches between one set of lathes.

2.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

2.1 Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.2 Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

2.3 Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

3.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her crab pot provided said food fish is not otherwise illegal to possess at that time.

4.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her blue crab dredge provided said food fish is not otherwise illegal to possess at that time.

2 DE Reg. 1905 (4/1/99)

6 DE Reg. 350 (9/1/02)

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners

Statutory Authority: 24 Del.C. §1406(a)(1); 24 DE Admin. Code 1400

PUBLIC NOTICE

The Delaware Board of Electrical Examiners, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §1406(a)(1), proposes changes to its Regulations 6.0, 7.0, and 8.0 relating to electricians' liability insurance. Specifically, the changes to **6.0 License and Insurance**, **7.0 Expiration and Renewal**, and **8.0 Continuing Education** would allow licensees to attest to maintenance of their required liability insurance during the renewal process. The Board also proposes to change **15.0 Inspection Agencies** to end the Division of Professional Regulation's practice of mailing quarterly lists of licensed electricians to all licensed inspection agencies.

A public hearing will be held on the proposed regulations on Thursday, November 1, 2006 at 8:30 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 Judy Letterman 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 Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

1400 Board of Electrical Examiners

(Break in Continuity of Sections)

6.0 License and Insurance

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

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

6.3 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his or her employer must maintain separate insurance for that risk as provided under these regulations.

4 DE Reg. 1788 (5/1/01)

7.0 Expiration and Renewal

7.1 ~~The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov.~~

7.2 ~~As a condition of Rrenewal., each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his expiration date does not in any way relieve that responsibility. Renewal may be accomplished online at www.dpr.delaware.gov.~~

7.2.1 Renewal applications will be randomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that selection within sixty (60) days after the renewal deadline. Licensees must then submit verification of their receipt of the notification of audit within ten (10) days.

7.2.2 As a condition of renewal, each applicant must attest to completion of continuing education (CE) as required by Regulation 8.0 and to maintenance of the liability insurance required by Regulation 6.0. Attestation may be completed electronically if renewal is accomplished online. Alternatively, paper renewal documents containing the CE and insurance attestations may be submitted. Licensees selected for random audit will be required to supplement their attestations with documentation of CE attendance and maintenance of insurance coverage.

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

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

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

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience can be used to satisfy the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

4 DE Reg. 1788 (5/1/01)

9 DE Reg. 260 (8/1/05)

8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and shall be completed by June 30 of any year in which a license is to be renewed. Extra continuing education hours do not carry over to the next licensing period. Licensees will only get CE credit for their first attendance of CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not receive additional CE credit.

~~8.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.~~

~~8.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.~~

~~8.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.~~

8.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at www.dpr.delaware.gov. Licensees may also contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor.

8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.2.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.

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

~~8.5 Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.~~

~~8.5.1 The Board will notify licensees within sixty (60) days after June 30 that they have been selected for audit.~~

~~8.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.~~

4 DE Reg. 1788 (5/1/01)

9 DE Reg. 1252 (2/1/06)

(Break in Continuity of Sections)

15.0 Inspection agencies

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 **Del.C.** §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.

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

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

15.4 An employee of an inspection agency shall confirm that the person who has filed for an inspection is a licensee under this chapter, a homeowner having a permit, or a person who has performed work allowed under an exception to licensure. ~~The Division of Professional Regulation will provide quarterly lists of licensees to each inspection agency licensed in this State.~~ Licensure verification is available online, free of charge at www.dpr.delaware.gov.

15.5 If a violation found in an inspection is not corrected within 15 days as provided in 24 **Del.C.** §1421(g), the inspection agency shall notify the Board in writing and include a copy of the notice of violation. The Division of Professional Regulation will send, on behalf of the Board, the notice of violation to the other inspection agencies and to any local building inspector having jurisdiction over the structure.

15.6 An inspection agency shall notify the Board in writing within 10 days when an employee leaves the agency or when a new employee is hired by the agency. This notification shall include the full name and address of the inspector. The date a new employee is hired by an inspection agency marks the beginning of the period in which the inspection examinations in Rule 15.3 must be successfully completed.

4 DE Reg. 1788 (5/1/01)

6 DE Reg. 1495 (5/1/03)

7 DE Reg. 1167 (3/1/04)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Electrical Examiners is available at:**
<http://www.state.de.us/research/AdminCode/title24/1400%20Board%20of%20Electrical%20Examiners.shtml>

PROPOSED REGULATIONS

DIVISION OF PROFESSIONAL REGULATION

4400 Delaware Manufactured Home Installation Board

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 Del.C. §4416(b)(1))
24 DE Admin. Code 4400

PUBLIC NOTICE

The Delaware Manufactured Home Installation Board, in accordance with 24 Del.C. §4416(b)(1) has proposed the rules and regulations to implement the Manufactured Home Installation Act, 24 Del.C. §4400. The rules were initially published for comment in the Delaware Register of Regulations on August 1, 2006. At the public hearing on September 11, 2006, and at its subsequent public meeting, the Board made substantive changes to the proposed regulations. The Board revised Regulation 1.0 License Required by adding one paragraph and revising the last two paragraphs. The Board also revised Regulation 3.0 License and Certificate Requirements by deleting the word "performance" from Regulation 3.1.4. A public hearing on the revised proposed rules and regulations will be held on Monday, November 13, 2006, at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Manufactured Home Installation Board, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

4400 Delaware Manufactured Home Installation Board

1.0 License Required

1.1 Only natural persons may be licensed by the Board.

1.2 No person shall install manufactured homes or represent themselves as qualified to install manufactured homes without first having been duly licensed unless specifically excepted by statute.

1.3 A licensed manufactured home installer must oversee all aspects of the installation of a manufactured home; however, multiple licensed installers may be involved in the installation of a particular home at the discretion of the licensee who certifies the installation on the decal required by Regulation 11.0. The licensed manufactured home installer who certifies the installation on the decal affixed to the data plate is responsible for the installation and certifies that the installation was performed in accord with all applicable law, including the Board's statute and regulations.

1.4 Exceptions.

1.4.1 No license is required for persons working under the direct, on site supervision of a Delaware licensed manufactured home installer, as indicated in Section 4403(a)(10) and

1.4.2 No manufactured home installation license is required for persons who are currently certified, licensed, or registered by other boards or commissions of this State and who act within the scope of activity for which they are currently licensed, certified or registered. Examples include, but are not limited to, plumbers, electricians and well and septic installers.

2.0 Applications

2.1 All applications for licenses, certificates and renewal of licenses and certificates shall be submitted on forms approved by the Board.

2.1.1 Applications may be obtained over the Internet at the Division of Professional Regulation's website. Applications may also be obtained in person during regular business hours or by mail from the Division of Professional Regulation.

2.1.2 Renewal applications may be submitted in electronic form over the Internet. A licensee or certificate holder who does not have Internet access or otherwise wishes to renew in paper form must contact the Division to request a paper renewal application, and submit the renewal application sufficiently in advance of the renewal deadline to ensure that the license or certificate does not lapse.

2.2 The Board may require additional information or explanation when it has questions about an applicant's qualifications or application materials. An application is not complete until the Board has received all required and requested documents, materials, information and fees.

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

2.2.2 Applicants must meet the requirements for license or certification at the time their applications are complete.

3.0 License and Certificate Requirements

3.1 Each applicant for a manufactured home installer license must provide the Board with the following, or have this information provided from the appropriate source, where indicated:

3.1.1 Evidence in a form satisfactory to the Board that the applicant has successfully passed the examination designated by the Board. Evidence shall include confirmation from the Division or other authorized testing agency that the applicant has achieved a passing score on the Board-approved examination.

3.1.2 Evidence in a form satisfactory to the Board that the applicant has completed education requirements set forth in Rule 4.0. Evidence shall include a certificate or other acknowledgement of completion of the education requirement that is submitted to the Board by the education provider. This document shall identify the course, the course provider and location, and the date completed.

3.1.3 Evidence in a form satisfactory to the Board that the applicant is at least 18 years old. Such evidence includes a certified copy of the applicant's birth certificate, a passport, an identification card issued by the State of Delaware or a driver's license issued by the State of Delaware.

3.1.4 Evidence in a form satisfactory to the Board that the applicant holds a bond in an amount of equal to or greater than \$10,000. Evidence shall include an acknowledgement submitted to the Board from the provider of the bond.

3.1.5 Evidence in a form satisfactory to the Board that the applicant carries liability insurance in an amount equal to or greater than \$100,000. Evidence shall include an acknowledgement submitted to the Board from the insurance carrier.

3.1.6 A statement under oath or other verification satisfactory to the Board that the applicant agrees to be responsible for all acts or omissions of any individual acting under the supervision of the applicant while assisting in the installation of manufactured housing.

3.1.7 Reciprocity

3.1.7.1 An applicant for licensure as a manufactured home installer by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of the reciprocal state's current licensure requirements

3.2 Each applicant for a certificate of manufactured home installation inspector must provide the Board with the following

3.2.1 A completed application on the form approved by the Board.

3.2.2 Evidence in a form satisfactory to the Board that the applicant has successfully completed the certification course designated by the Board. Evidence shall include a certificate or other acknowledgement of completion of the education requirement that is submitted to the Board by the education provider. This document shall identify the course, the course provider and location, and the date completed.

3.2.3 Evidence in a form satisfactory to the Board that the applicant is a full-time, part-time or casual/seasonal employee of an authorized inspection agency. Evidence shall include a current written statement signed by the applicant's supervisor in his capacity as a supervisor identifying the applicant's employment status and date of employment.

4.0 Education

4.1 All applicants must successfully complete a Board-approved course to qualify for licensure or certification.

4.1.1 Training courses must provide at least fifteen (15) hours of education. An "hour" for purposes of this requirement shall mean fifty (50) minutes of instruction or participation in an appropriate course or

program. Meals and breaks shall be excluded from credit.

- 4.2 To be approved by the Board, training courses must address the following areas:
 - 4.2.1 Federal statutes and regulations governing manufactured housing;
 - 4.2.2 Manufacturer's installation manuals and requirements;
 - 4.2.3 Preparation of manufactured housing stands;
 - 4.2.4 Installation of foundation systems;
 - 4.2.5 Blocking, perimeter support and leveling of manufactured homes;
 - 4.2.6 Structural connections of sections and major components;
 - 4.2.7 Installation of anchoring systems and components;
 - 4.2.8 Installation of vapor barriers, curtain walls, access and ventilations for crawl space areas;
- and
- 4.2.9 Connections of other nonstructural components.

5.0 Examination

- 5.1 An applicant for licensure as a manufactured home installer shall obtain a grade of 70% on the Board-approved examination to qualify for licensure.
- 5.2 Applicants may use the following three reference materials during the examination:
 - 5.2.1 A Board-approved reference manual;
 - 5.2.2 The Statute governing this Board, Title 24, Chapter 44 of the **Delaware Code**; and
 - 5.2.3 The Board's Rules and Regulations, 24 **Del. Admin. Code** Section 4400.
- 5.3 Applicants who fail two consecutive times must wait one year before retesting.

6.0 Lapse and Renewal of Licenses and Certificates

6.1 The biennial licenses and certificates granted by the Board shall lapse on September 30th of each even numbered year beginning in 2008, or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee or certificate holder of the expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board. License and certificate renewal may be accomplished online at the Division of Professional Regulation's website.

6.2 Each applicant for renewal must retain proof of completing the continuing education requirements. Extra continuing education hours do not carry over to the next licensing or certification period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

6.3 A license or certificate is lapsed when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee or certificate holder may activate a lapsed license or certificate within one year of the date the renewal application was due by meeting all renewal requirements and paying an additional fee set by the Division of Professional Regulation.

6.4 An individual whose license or certificate has lapsed for more than one year must reapply as a new applicant. The applicant must take the examination required by §4416(b)(3) and achieve a passing score unless he or she previously passed an approved licensure test that covered the applicable law and standards in effect at the time of the new application.

7.0 Inactive License or Certificate: Expiration; Reactivation

7.1 A licensee or certificate holder with a valid license may request in writing to be placed on inactive status. Inactive status can be effective for up to two years.

7.2 Each inactive license and certificate shall expire at the end of the biennial licensing and certificate period applicable to active licensees, which is September 30 of even-numbered years beginning in 2008. An inactive license or certificate may be renewed for two years by application to the Division upon proof of 10 hours of continuing education in the past two years.

7.3 An inactive license may be reactivated by the Board upon written request on a form designated by the Board, proof of insurance and bond, proof that the licensee has completed the requisite continuing education, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.4 An inactive certificate may be reactivated by the Board upon written request on a form designated by the Board, proof of completion of the requisite continuing education, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee or certificate holder is not authorized to work as a licensed manufactured home installer or certified manufactured home installation inspector, respectively, in this State during the period of inactive status.

8.0 Continuing Education ("CE")

8.1 Licensees and certificate holders shall complete 10 hours of approved CE by September 30 of each biennial renewal period.

8.1.1 This requirement is prorated for license or certificate holders during their initial licensing period as follows:

8.1.1.1 A person licensed less than one year does not need to complete CE at the first renewal.

8.1.1.2 A person licensed one year but less than two years must submit 5 CE hours at the first renewal.

8.1.2 An "hour" for purposes of continuing education credit shall mean fifty (50) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

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

8.3 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation.

8.3.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to the installation of manufactured housing.

8.3.2 Course providers, licensees and certificate holders may request Board approval of courses at any time by submitting a written request to the Board and including a course outline with the number of classroom hours and the curriculum vitae or resume of the instructor.

8.3.3 Course providers, licensees and certificate holders seeking pre-approval should submit the request a sufficient amount of time in advance of the CE course to permit the Board to consider the request at a regularly-scheduled Board meeting.

8.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.

8.4.1 Attestation may be completed electronically if the renewal is accomplished online. Alternatively, licensees and certificate holders may submit the attestation in paper form on forms approved by the Board.

8.4.2 Licensees and certificate holders selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.

8.4.3 Approval of CE automatically expires on September 30, 2008 and every two years thereafter on each September 30. A sponsor must reapply for approval as provided in Rule 8.3.

8.5 Random audits will be performed by the Board to ensure compliance with the license and certificate requirements. Licensees and certificate holders selected for the random audit shall submit verification that they maintain the required bond and liability insurance, verification of required employment status, and the completion of the required CE, as applicable and any other information required by the Board to confirm their continued eligibility for the license or certificate.

8.5.1 In a renewal year, the Board will notify licensees and certificate holders within sixty (60) days after September 30 that they have been selected for audit.

8.5.2 Licensees selected for random audit are required to submit verification within ten (10) days of receipt of notification of selection for audit.

9.0 Manufactured Home Installation Requirements

9.1 Manufactured homes shall be installed in accord with Section 4421(b).

9.2 Footers. Manufactured homes installed in this State shall be installed on piles or concrete footers. Concrete footers shall consist of a minimum of 3000 psi concrete and shall be a minimum of 24 inches in diameter, at least eight (8) inches thick and set two (2) feet deep from final grade where soil conditions permit. Where the regulations of the Department of Housing and Urban Development, the manufacturer's installation instructions or manual, NCSB/ANSI code or the set of plans designed for the specific manufactured home under the seal of a registered professional engineer, as applicable under Section 4421(b), require more stringent standards, those standards shall apply.

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9.3 Anchoring. Manufactured homes installed in the State shall be anchored. Anchors shall be installed in accord with the regulations of the Department of Housing and Urban Development, the manufacturer's installation instructions or manual, NCSB/ANSI code or the set of plans designed for the specific manufactured home under the seal of a registered professional engineer, as applicable under Section 4421(b).

10.0 Inspection

10.1 Of the maximum five (5) inspections required by Section 4422(a):

10.1.1 One inspection shall be performed once the ground is prepared for the concrete to be poured.

10.1.2 One inspection shall be performed upon completion of the installation in accord with Section 4422(a).

11.0 Decals

11.1 A decal represents the installer's certification that the installation was completed in compliance with the manufacturer's installation manual and all applicable law.

11.2 Licensees shall purchase Board approved decals from the Board for a fee to be established by the Division.

11.2.1 Decals may only be purchased by licensees in good standing.

11.2.2 Decals shall be numbered in sequence and affixed by the licensed installer to the manufactured home in accord with Section 11.4 below.

11.3 The licensed installer shall clearly inscribe the installation completion date, the name of the installer, and the installer's license number in blue or black ink on the decal.

11.4 The decal shall be permanently affixed in plain view next to the manufactured home data plate. In the absence of a data plate, the decal shall be permanently affixed in the interior breaker panel box.

11.5 Licensees shall record the decal number, installation completion date, location of manufactured home, and the name of owner in a log maintained by the licensee on a continuous basis.

12.0 Use of Designations

12.1 A licensee shall prominently display the words "Licensed Manufactured Home Installer" and his license number on the exterior of all vehicles used for work in not less than three inch letters and numbers.

12.2 Only an individual who is registered with the Board and holds a license as a manufactured home installer may use the designation "Licensed Manufactured Home Installer" and other designations which suggest that the user is a licensed manufactured home installer.

12.3 No individual, sole proprietorship, partnership, corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/itself or otherwise use the title or designation "licensed manufactured home installer or any other title, designation, or abbreviation of any titles or designations likely to be confused with "licensed manufactured home installer".

13.0 Organization of the Board

13.1 Election of Officers. Beginning in 2007, the Board shall elect officers to serve for a one year term from April 1-March 31. Elections shall be held annually and shall occur no earlier than 3 months prior to April 1.

13.2 Duties of the Officers

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

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

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

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

officer.

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

14.0 Discipline: Unlicensed Practice: Board Appointment of Licensed Installer or Certified Inspector

14.1 If the Board requires a licensed installer to take over the work done by an unauthorized practitioner pursuant to Section 4416(b)(13), the Board will choose the licensed installer from among those licensed installers who have volunteered to perform such work, whose license is in good standing and not subject to probation, other discipline or a pending complaint, and whose business address is in the jurisdiction of the same authorized inspection agency as the subject property and closest in proximity to the subject property. If there are no volunteers who qualify, then the Board shall select a licensee at random. A licensee selected at random may be excused from the performance of this duty if he presents evidence that it will cause a hardship.

14.2 If the Board requires a certified inspector to inspect work completed by an unauthorized practitioner pursuant to Section 4416(b)(13), the Board will choose a certified inspector employed by the authorized inspection agency in whose jurisdiction the manufactured home is situated.

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

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

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

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

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the participating Board or to that president's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as

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required by the president of the participating Board or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

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

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

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

15.8 The participating Board's president, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

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

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

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

15.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

16.0 Crimes Substantially Related to the Practice of Manufactured Home Installation or Installation Inspection

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

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

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

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

16.1.4 Manslaughter. 11 Del.C. §632

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

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

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

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

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- 16.1.9 Unlawful sexual contact in the second degree. 11 Del.C. §768
 - 16.1.10 Unlawful sexual contact in the first degree. 11 Del.C. §769
 - 16.1.11 Rape in the fourth degree. 11 Del.C. §770
 - 16.1.12 Rape in the third degree. 11 Del.C. §771
 - 16.1.13 Rape in the second degree. 11 Del.C. §772
 - 16.1.14 Rape in the first degree. 11 Del.C. §773
 - 16.1.15 Sexual extortion. 11 Del.C. §776
 - 16.1.16 Continuous sexual abuse of a child. 11 Del.C. §778
 - 16.1.17 Kidnapping in the second degree. 11 Del.C. §783
 - 16.1.18 Kidnapping in the first degree. 11 Del.C. §783A
 - 16.1.19 Arson in the third degree. 11 Del.C. §801
 - 16.1.20 Arson in the second degree. 11 Del.C. §802
 - 16.1.21 Arson in the first degree. 11 Del.C. §803
 - 16.1.22 Criminal mischief. 11 Del.C. §811
 - 16.1.23 Burglary in the third degree. 11 Del.C. §824
 - 16.1.24 Burglary in the second degree. 11 Del.C. §825
 - 16.1.25 Burglary in the first degree. 11 Del.C. §826
 - 16.1.26 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828
 - 16.1.27 Robbery in the second degree. 11 Del.C. §831
 - 16.1.28 Robbery in the first degree. 11 Del.C. §832
 - 16.1.29 Carjacking in the second degree. 11 Del.C. §835
 - 16.1.30 Carjacking in the first degree. 11 Del.C. §836
 - 16.1.31 Theft. 11 Del.C. §841
 - 16.1.32 Theft of motor vehicle. 11 Del.C. §841A
 - 16.1.33 Theft: lost or mislaid property; mistaken delivery. 11 Del.C. §842
 - 16.1.34 Theft: false pretense. 11 Del.C. §843
 - 16.1.35 Theft: false promise. 11 Del.C. §844
 - 16.1.36 Theft of services. 11 Del.C. §845
 - 16.1.37 Extortion. 11 Del.C. §846
 - 16.1.38 Theft of rented property. 11 Del.C. §849
 - 16.1.39 Receiving stolen property. 11 Del.C. §851
 - 16.1.40 Identity theft. 11 Del.C. §854
 - 16.1.41 Forgery. 11 Del.C. §861
 - 16.1.42 Possession of forgery devices. 11 Del.C. §862
 - 16.1.43 Forgery and related offenses. 11 Del.C. §863
 - 16.1.44 Falsifying business records. 11 Del.C. §871
 - 16.1.45 Tampering with public records in the second degree. 11 Del.C. §873
 - 16.1.46 Tampering with public records in the first degree. 11 Del.C. §876
 - 16.1.47 Offering a false instrument for filing. 11 Del.C. §877
 - 16.1.48 Issuing a false certificate. 11 Del.C. §878
 - 16.1.49 Bribery. 11 Del.C. §881
 - 16.1.50 Bribe receiving. 11 Del.C. §882
 - 16.1.51 Deceptive business practices. 11 Del.C. §906
 - 16.1.52 Criminal impersonation. 11 Del.C. §907
 - 16.1.53 Criminal impersonation of a police officer. 11 Del.C. §907B
 - 16.1.54 Securing execution of documents by deception. 11 Del.C. §909
 - 16.1.55 Insurance fraud. 11 Del.C. §913
 - 16.1.56 Home improvement fraud. 11 Del.C. §916
 - 16.1.57 New home construction fraud. 11 Del.C. §917
 - 16.1.58 Dealing in children. 11 Del.C. §1100
 - 16.1.59 Sexual exploitation of a child. 11 Del.C. §1108
 - 16.1.60 Unlawfully dealing in child pornography. 11 Del.C. §1109
 - 16.1.61 Possession of child pornography. 11 Del.C. §1111
 - 16.1.62 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112

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- 16.1.63 Sexual solicitation of a child. 11 Del.C. §1112A
16.1.64 Bribery. 11 Del.C. §1201
16.1.65 Receiving a Bribe. 11 Del.C. §1203
16.1.66 Giving unlawful gratuities. 11 Del.C. §1205
16.1.67 Receiving unlawful gratuities. 11 Del.C. §1206
16.1.68 Improper influence. 11 Del.C. §1207
16.1.69 Official misconduct. 11 Del.C. §1211
16.1.70 Profiteering. 11 Del.C. §1212
16.1.71 Perjury in the third degree. 11 Del.C. §1221
16.1.72 Perjury in the second degree. 11 Del.C. §1222
16.1.73 Perjury in the first degree. 11 Del.C. §1223
16.1.74 Making a false written statement. 11 Del.C. §1233
16.1.75 Terroristic threatening of public officials or public servants. 11 Del.C. §1240
16.1.76 Bribing a witness. 11 Del.C. §1261
16.1.77 Bribe receiving by a witness. 11 Del.C. §1262
16.1.78 Tampering with a witness. 11 Del.C. §1263
16.1.79 Interfering with a child witness. 11 Del.C. §1263A
16.1.80 Bribing a juror. 11 Del.C. §1264
16.1.81 Bribe receiving by a juror. 11 Del.C. §1265
16.1.82 Tampering with a juror. 11 Del.C. §1266
16.1.83 Misconduct by a juror. 11 Del.C. §1267
16.1.84 Tampering with physical evidence. 11 Del.C. §1269
16.1.85 Hate crimes. 11 Del.C. §1304
16.1.86 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C.
- §1338
- 16.1.87 Carrying a concealed deadly weapon. 11 Del.C. §1442
16.1.88 Carrying a concealed dangerous instrument. 11 Del.C. §1443
16.1.89 Possessing a destructive weapon. 11 Del.C. §1444
16.1.90 Unlawfully dealing with a dangerous weapon. 11 Del.C. §1445
16.1.91 Unlawfully dealing with a switchblade knife. 11 Del.C. §1446
16.1.92 Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447
16.1.93 Possession of a firearm during the commission of a felony. 11 Del.C. §1447A
16.1.94 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C.
- §1448
- 16.1.95 Receiving a stolen firearm. 11 Del.C. §1450
16.1.96 Theft of a firearm. 11 Del.C. §1451
16.1.97 Unlawfully dealing with knuckles-combination knife. 11 Del.C. §1452
16.1.98 Unlawfully dealing with martial arts throwing star. 11 Del.C. §1453
16.1.99 Giving a firearm to person prohibited. 11 Del.C. §1454
16.1.100 Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455
16.1.101 Unlawfully permitting a minor access to a firearm. 11 Del.C. §1456
16.1.102 Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457
16.1.103 Removing a firearm from the possession of a law enforcement officer. 11 Del.C.
- §1458
- 16.1.104 Possession of a weapon with a removed, obliterated or altered serial number. 11
Del.C. §1459
- 16.1.105 Criminal Penalties, Organized Crime and Racketeering. 11 Del.C. §1504
16.1.106 Act of intimidation. 11 Del.C. §3532
16.1.107 Aggravated act of intimidation. 11 Del.C. §3533
16.1.108 Prohibited Acts A; penalties. 16 Del.C. §4751
16.1.109 Prohibited Acts B; penalties. 16 Del.C. §4752
16.1.110 Unlawful delivery of noncontrolled substance. 16 Del.C. §4752A
16.1.111 Prohibited Acts C; penalties. 16 Del.C. §4753
16.1.112 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid

- Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxyamphetamine (MDMA). 16 Del.C. §4753A
- 16.1.113 Prohibited acts D: penalties. 16 Del.C. §4754
 - 16.1.114 Possession and delivery of noncontrolled prescription drug. 16 Del.C. §4754A
 - 16.1.115 Prohibited acts: penalties. 16 Del.C. §4756
 - 16.1.116 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions: penalties. 16 Del.C. §4757
 - 16.1.117 Distribution to persons under 21 years of age; penalties. 16 Del.C. §4761
 - 16.1.118 Purchase of drugs from minors; penalties. 16 Del.C. §4761A
 - 16.1.119 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 Del.C. §4767
 - 16.1.120 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 Del.C. §4768
 - 16.1.121 Drug paraphernalia. 16 Del.C. §4771(a) and (b)
 - 16.1.122 Penalties [drug paraphernalia]. 16 Del.C. §4774
 - 16.1.123 Attempt to evade or defeat tax. 30 Del.C. §571
 - 16.1.124 Failure to collect or pay over tax. 30 Del.C. §572
 - 16.1.125 Failure to file return, supply information or pay tax. 30 Del.C. §573
 - 16.1.126 Fraud and false statements. 30 Del.C. §574
 - 16.1.127 Obtaining benefit under false representation. 31 Del.C. §1003
 - 16.1.128 Reports, statements or documents. 31 Del.C. §1004(1)-(4)
 - 16.1.129 Unlawful possession or manufacture of proof of insurance. 21 Del.C. §2118A
 - 16.1.130 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate. 21 Del.C. §2316
 - 16.1.131 Unlawful application for or use of license or identification. 21 Del.C. §2751
 - 16.1.132 False statements. 21 Del.C. §2752
 - 16.1.133 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty. 21 Del.C. §6705(a)-(e)
 - 16.1.134 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card. 21 Del.C. §6708(a) and (b).
 - 16.1.135 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty. 21 Del.C. §6709(a)
 - 16.1.136 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty. 21 Del.C. §6710(a)
 - 16.1.137 Permits Required [regarding environmental control]. 7 Del.C. §6003
 - 16.1.138 Criminal Penalties [for violation of §6003 or Regulations]. 7 Del.C. §6013
- 16.2 Crimes substantially related to the practice of manufactured home installation or manufactured home installation inspection shall be deemed to include any crimes under any federal law, state law or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 1101, 1109 and 1113 and 1114

Notice of Proposed Adoption and Amendment of Regulations of the State Bank Commissioner

Summary

The State Bank Commissioner proposes to adopt amended Regulations 1101, 1109 and 1113 and new Regulation 1114.

Proposed amended Regulation 1101 ("Election to be Treated for Tax Purposes as a 'Subsidiary

Corporation' of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank that Operates a Resulting Branch in Delaware") is being adopted to conform the regulation to §1101A of Title 5 of the **Delaware Code**, enacted by 75 **Delaware Laws** Ch. 223, which references that election for the Alternative Bank Franchise Tax in §1101A(c)(3). Proposed amended Regulation 1109 ("Instructions for Calculation of Employment Tax Credits (5 **Del.C.** §1105)") is being adopted to conform the regulation to the five-year extension of the Employment Tax Credit for the Bank Franchise Tax that was enacted by 75 **Delaware Laws** Ch. 335 and also to conform the regulation to 75 **Delaware Laws** Ch. 223, which amends §1105 of Title 5 for the Alternative Bank Franchise Tax. Proposed amended Regulation 1113 ("Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30") is being adopted to conform the regulation to §1101A of Title 5, which references that election for the Alternative Bank Franchise Tax in §1101A (c)(2). Proposed new Regulation 1114 ("Alternative Franchise Tax") provides tax return forms and instructions for the Alternative Bank Franchise Tax allowed by §1101A of Title 5.

The State Bank Commissioner would adopt proposed amended Regulations 1101, 1109 and 1113 and new Regulation 1114 on or after November 2, 2006. Other regulations issued by the State Bank Commissioner are not affected by these proposals. The State Bank Commissioner is issuing these regulations in accordance with Title 5 of the **Delaware Code**.

Comments

Copies of the proposed amended and new regulations are published in the *Delaware Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Lookerman Street, Suite 210, Dover, DE 19901 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended and new regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received at or before the public hearing scheduled for November 2, 2006.

Public Hearing

A public hearing on the proposed amended and new regulations will be held in the Office of the State Bank Commissioner; 555 E. Lookerman Street; Suite 210; Dover, DE 19901 on November 2, 2006 commencing at 10:00 a.m.

This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

1101 Election to Be Treated for Tax Purposes as a "Subsidiary Corporation" of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank That Operates a Resulting Branch in Delaware

5 **Del.C.** §1101(f), §1101A(c)(3)

Formerly Regulation No.: ~~5.1101(f).0004~~

Effective Date: ~~September 11, 2004~~ Proposed

1.0 Purpose

1.1 Pursuant to 5 **Del.C.** §1101(f) and §1101A(c)(3), certain corporations may elect to be treated as a "subsidiary corporation" of a Delaware chartered banking organization or trust company, a national bank having its principal office in Delaware, or an out-of-state bank that operates a resulting branch in Delaware. If a valid election is made, the electing corporation will be taxable on a consolidated basis with its deemed parent Delaware chartered banking organization or trust company, national bank having its principal office in Delaware, or out-of-state bank that operates a resulting branch in Delaware, and the electing corporation will be exempt from Delaware state corporation income taxes and occupational license taxes (as provided in 5 **Del.C.** §1109).

2.0 Who May Elect

2.1 A corporation may make the election only if it meets the following two tests:

2.1.1 Ownership test: Eighty percent (80%) of the total combined voting power of all classes of voting stock of the electing corporation ("Electing Corporation") is owned by an out-of-state bank that operates a resulting branch in Delaware or, directly or indirectly, by a bank holding company ("Qualifying Entity") that also, directly or indirectly, owns all of the stock of a Delaware chartered banking organization or trust company, a national bank located in Delaware or an out-of-state bank that operates a resulting branch in Delaware ("Deemed Parent"). For purposes of determining ownership of the voting power of an Electing Corporation, non-voting stock convertible into voting stock shall be treated as having been so converted.

2.1.2 In order to determine if this test is met, Question 5 on the election form must be completed. In Column A of Question 5, list each class of stock or property right which has voting rights or can be converted into stock with voting rights. In Column B, state the percentage of the Electing Corporation's total voting power of that particular class of stock (assuming full conversion). In Column C, state the percentage of each respective class that the Qualifying Entity owns. If each figure in Column C is at least 80%, then this first test is met and Column D need not be completed. If not, Column D should be calculated by multiplying Column B times Column C. The sum of the figures in Column D must be at least equal to 80%. The ownership test must be met at all times during the taxable year for which the election is made.

2.2 Employment Test: The Electing Corporation, together with its affiliates (defined by 5 **Del.C.** §773(1)), employs by or before the end of the taxable year following the taxable year in which the election was made at least 200 persons in Delaware.

3.0 Where to File

3.1 The original of the election form must be filed with the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, and a copy must be filed with the Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801.

4.0 When to Make the Election

4.1 The election must be made and filed before the first day of the fourth month of the Electing Corporation's taxable year, except that, (1) in the case of a corporation that is newly formed or acquired by the Qualifying Entity, the election may be made and filed within 90 days of such formation or acquisition, and such later election shall not be subject to the payment of any additional tax under 5 **Del.C.** §1104(c) for underpayment of estimated tax or installment for periods before the date of such election, and (2) with the approval of the Commissioner, a later election may be made, subject to the payment of any additional tax for underpayment of estimated tax or installment as provided in 5 **Del.C.** §1104(c) and applicable regulations of the Commissioner.

5.0 Supplemental Reporting Requirements

5.1 Once an election has been made under 5 **Del.C.** §1101(f) or §1101A(c)(3) for any Electing Corporation, and so long as the same remains in effect, each Estimated Franchise Tax Report under Regulation 1104 (~~formerly 5.1101etal.0003~~) or 1111 (~~formerly 5.1101etal.0010~~) or 1114 and each Final Franchise Tax Report under Regulation 1105 (~~formerly 5.1101etal.0004~~) or 1112 (~~formerly 5.1101etal.0011~~) or 1114 filed by the Deemed Parent shall indicate on the first page thereof the name of each Electing Corporation whose income and expenses are consolidated with that of the Deemed Parent. In addition, each such consolidated Report filed by the Deemed Parent shall have attached to it separate Reports completed on an individual non-consolidated basis for each Electing Corporation (complete such attachments only to the extent necessary to calculate estimated or final taxable income).

5.2 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form must be completed each year for each Electing Corporation and attached to the Final Franchise Tax Report of the Deemed Parent.

5 DE Reg. 647 (09/01/01)

6.0 Termination of Election

6.1 Once an election is made, it remains in effect until terminated (a) by notice of voluntary termination delivered to the State Bank Commissioner, with a copy to the Delaware Division of Revenue, at any time during the Electing Corporation's taxable year (which termination shall be effective as of the first day of such taxable year), or (b) by failure to meet the ownership test and the employment test referenced in section 2.1 and 2.2 hereof. If either

PROPOSED REGULATIONS

test is first failed at any time during the first six months of any taxable year, the termination shall relate back to the first day of such taxable year. If either test is failed at any time during the second six months of any taxable year, the termination shall relate forward to the first day of the succeeding taxable year. However, an Electing Corporation shall have the allowable time period referenced in Section 2.2 initially to meet the employment test.

6.2 If an election is terminated, the Deemed Parent shall file an amended Estimated and/or Final Franchise Tax Report for the year for which the election was originally made, which Estimated and/or Final Franchise Tax Report shall eliminate the income and expenses of the Electing Corporation. Any resulting reduction in bank franchise taxes can be utilized by the Deemed Parent as credit (without interest) against its future bank franchise tax liability.

7.0 Taxable Year

7.1 The "taxable year" of an Electing Corporation shall end on the same date as the taxable year of the Deemed Parent (as determined for federal income tax reporting purposes), unless a different taxable year is approved by the State Bank Commissioner.

Election to be Treated as a Subsidiary Corporation Under 5 Del.C §1101(f) or §1101A(c)(3)

Initial Election _____ or Verification For Tax Year _____

1. Name and Principal Place of Business of Electing Corporation:
2. First day of Electing Corporation's taxable year for which election is made:
3. Name and Principal Place of Business of Qualifying Entity (as defined in Section 2.1 of this regulation).
4. Name and Principal Place of Business of Deemed Parent (as defined in Section 2.1 of this regulation):
5. Ownership of Voting Power of Electing Corporation (See Section 2.1 of this regulation):

(A)	(B)	(C)	(D)
Class of Voting Stock (including property convertible into voting stock)	Class's Percentage of Corporation's Total Voting Power	Percentage of Class Held by Qualifying Entity	Weighted Voting Power of Class Held by Qualifying Entity
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total	100%	Total	_____

6. Does the Electing Corporation and its "affiliates" (as defined by 5 Del.C. §773(1)) currently have 200 or more Delaware employees? _____

7. If the answer to Question 6 is "No," do you expect the number of Delaware employees of the Electing Corporation and its affiliates to be at least equal to 200 by the end of the taxable year following the year of election? _____

8. The undersigned does hereby certify that the undersigned is duly authorized on behalf of the Electing Corporation to make an election to be treated as a "subsidiary corporation" of the above-named Deemed Parent for purposes of 5 Del.C. §1101 and that all statements herein are true and correct to the best of the undersigned's knowledge and belief.

Date
Signature
Title

Print Name

Phone No.

Print Address

Mail Completed Forms To:

Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901
5 DE Reg. 647 (09/01/01)

1109 Instructions for Calculation of Employment Tax Credits (5 Del.C. §1105) 5 Del.C. §1105

Formerly Regulation No.: ~~5.1105.0008~~
Effective Date: ~~September 11, 2004~~ Proposed

This regulation provides for the calculation of employment tax credits for the years 1997 through ~~2006~~ 2011 for entities subject to the bank franchise tax. These employment tax credits are provided in Section 1105(d), and subject to requirements in Sections 1105(e) and 1105(f), of Title 5 of the **Delaware Code**.

5 DE Reg. 669 (09/01/01)

1.0 Definitions

“**Base Year**” means calendar year 1996.

“**Full-time Employment**” means employment of any individual for at least 35 hours per week, not including absences excused by reason of vacations, illness, holidays or similar causes.

“**Health Care Benefits**” means financial protection against the medical care cost arising from disease and accidental bodily injury (for which the employer pays at least 50%) for workers employed by the employer for a continuous period of 6 months or more.

“**New Investment**” includes (1) machinery, (2) equipment and (3) the cost of land and improvements to land, provided that the new investment is placed into service within Delaware after December 1996 and was not used by any person at any time within the one year period ending on the date the taxpayer placed such property in service in the conduct of the taxpayer’s business. If the new investment is leased or subleased by the taxpayer, the amount of the new investment shall be deemed to be eight times the net annual rent paid or incurred by the taxpayer. The net annual rent represents the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of the facility during the taxable year.

“**Qualified Employee**” means an employee engaged in regular full-time employment, for whom the taxpayer provides health care benefits, who has been employed in Delaware by the taxpayer for a continuous period of at least 6 months and who was not employed at the same facility in substantially the same capacity by a different employer during all or part of the base year.

2.0 Employment Tax Credit

2.1 A tax credit for the current tax year shall be allowed against the tax imposed under subsection 1105(a) and 1101A of Title 5 of the **Delaware Code**. The amount of the credit shall be \$400 for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the taxpayer in full-time employment during the base year.

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3.0 New Investment Required

3.1 The employment tax credit provided above may not be claimed until the taxpayer has made new investments of at least \$15,000 per qualified employee in excess of the numbers of employees employed by the taxpayer in full-time employment during the base year.

4.0 Annual Limit On Credit

4.1 The amount of the employment tax credit allowable for the current tax year (including any credit carried forward as provided below) shall not exceed 50 percent of the amount of tax imposed on the taxpayer under Section 1105(a) and 1101A of Title 5 of the Delaware Code for the current tax year.

5.0 Applicable Years

5.1 The employment tax credit provided above may be earned and applied only in tax years beginning after December 31, 1996 and ending before January 1, ~~2007~~ 2012, subject to the credit carryover described below.

5 DE Reg. 669 (09/01/01)

6.0 Credit Carryover

6.1 The amount of the employment tax credit for any taxable year that is not allowable for such taxable year solely as a result of the limitation described above in Section 4.0 shall be a credit carryover to each of the succeeding 9 years in the manner described in Section 2011(f) of Title 30 of the **Delaware Code**.

7.0 Calculation Worksheet

7.1 The employment tax credit provided above shall be calculated on the accompanying Employment Tax Credit Calculation Worksheet, which shall be submitted with the taxpayer's tax report.

Employment Tax Credit Calculation Worksheet For Years 1997 - ~~2006~~ 2011

The Following Eligibility Requirements Apply to the Employment Tax Credit:

- The Number Of Qualified Employees Must Have Increased By At Least 50 Since Base Year 1996.
- Your Organization Must Have Made At Least \$750,000 In New Investments Within Delaware After 12/96.

A. Employment Requirement

- | | |
|--|------------|
| 1. Total Qualified Employees at Year End | _____ |
| 2. Less Number of Full-time Employees Working During Base Year | _____ |
| 3. Subtotal | _____ |
| 4. Less Minimum New Qualified Employee Threshold | _____ (50) |
| 5. Maximum Qualified Employees | _____ |

B. Required Investment

- | | |
|---|-------------------|
| 6. New Investment from 1/1/97 to Current Tax Year | _____ |
| 7. Less Minimum New Investment for First 50 Employees | _____ (\$750,000) |
| 8. Subtotal | _____ |
| 9. Divided by \$15,000 (Rounded down to the next Lowest Whole Number) | _____ |
| 10. Eligible Qualified Employees (Use the Lesser of Line 5 or 9) | _____ |

C. Credit Calculation

- | | |
|--|-------|
| 11. Employment Tax Credit for Current Tax Year (\$400 X Line 10) | _____ |
| 12. Prior Years' Tax Credit Carryover (If Applicable) | _____ |
| 13. Total Tax Credit Available | _____ |

D. Credit Allowed

-
- A. Employment Requirement
14. Current Year Franchise Tax Liability Pursuant to Chapter 11 of Title 5 _____
15. Maximum Tax Credit Allowed (50% of Line 14) _____
- E. Total Tax Credit Taken
16. (Lesser of Line 13 or Line 15) _____
- F. Tax Credit Carryforward
17. (Line 13 less Line 16) _____

1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30

Effective Date: ~~September 11, 2004~~ Proposed

1.0 Qualifications for Election

Pursuant to 5 **Del.C.** §1101(e) and §1101A(c)(2), a subsidiary corporation of a banking organization or trust company may elect to be taxed in accordance with Chapter 19 of Title 30 if the subsidiary is not itself a banking organization or trust company, if the subsidiary is not described in §1902(b)(8) of Title 30, and if the subsidiary is not engaged in the sale, distribution, underwriting of, or dealing in, securities.

2.0 Effect

If a valid election is made, the electing subsidiary shall not be considered a subsidiary corporation of its parent banking organization or trust company for the purposes of Chapter 11 of Title 5, and the income of the electing subsidiary shall be excluded from the taxable income of its parent banking organization or trust company for the tax year involved.

3.0 Filing

An electing subsidiary shall make this election by filing the original of Form A under this regulation with the State Bank Commissioner; 555 E. Loockerman Street; Suite 210; Dover, DE, 19901 and a copy with the Delaware Division of Revenue; 820 N. French Street; Wilmington, DE 19801.

4.0 Reporting Requirements

Every year, an electing subsidiary shall file with the State Bank Commissioner on or before the date that its Delaware State Income Tax Return is due (1) Form B under this regulation, and (2) a copy of its Delaware State Income Return as filed with the Delaware Division of Revenue.

5.0 Termination of Election

An election under this regulation remains in effect until terminated. An electing subsidiary may terminate its election by filing a notice to that effect with the State Bank Commissioner and the Delaware Division of Revenue.

FORM A

Election of a Subsidiary Corporation to be Taxed in Accordance with Chapter 19 of Title 30

The subsidiary corporation identified below hereby elects to be taxed in accordance with Chapter 19 of Title 30 of the **Delaware Code**.

1. (a) Name and address of subsidiary corporation: _____

- (b) State of incorporation of subsidiary corporation: _____
- (c) Federal Employer Identification Number of subsidiary corporation: _____

PROPOSED REGULATIONS

2. (a) Name and principal place of business of subsidiary corporation's parent banking organization or trust company:

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: _____

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?
____ yes ____ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** § 1902(b)(8)? ____ yes ____ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101?
____ yes ____ no

6. Describe the principal activities of the subsidiary corporation:

7. Effective date of election: _____

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make an election to be taxed under 30 **Del.C.** Ch. 19 and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

Date

Signature of President, Treasurer
or Other Proper Officer

Title

Print Name

Phone No.

Print Address

Mail or deliver original completed form to:
Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

Mail or deliver copy to:
Delaware Division of Revenue
820 N. French Street
Wilmington, DE 19801.

PROPOSED REGULATIONS

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FORM B

Annual Report of a Subsidiary Corporation Electing to be Taxed in Accordance with Chapter 19 of Title 30
Tax Year _____

1. (a) Name and address of subsidiary corporation:

(b) Federal Employer Identification Number of subsidiary corporation:

2. (a) Name and address of parent banking organization or trust company:

(b) Percentage of outstanding voting shares of subsidiary corporation owned by parent banking organization or trust company: _____

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?
____ yes ____ no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 **Del.C.** §1902(b)(8).
____ yes ____ no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 **Del.C.** §101?
____ yes ____ no

Attach copy of the subsidiary corporation's Delaware Income Tax Return for the tax year listed above.

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to make this return and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

Date Signature of President, Treasurer Title
or Other Proper Officer

Print Name

Phone No.

Print Address

Mail or deliver original completed form to:
Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

8 DE Reg. 474 (09/01/04)

PROPOSED REGULATIONS

1114 Alternative Franchise Tax

Chapter 11 of Title 5 of the **Delaware Code**

Effective Date: Proposed

1.0 This regulation applies to banking organizations and trust companies, other than federal savings banks not headquartered in this State but maintaining branches in this State, that annually elect to pay an alternative franchise tax pursuant to Section 1101A of Title 5 of the Delaware Code. The election to pay the alternative franchise tax is made by filing an original final alternative franchise tax return on the due date, or an amended return within 180 days of the due date of the original return.

2.0 Definitions

“Bank” means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

“Banking organization” means:

- A bank or bank and trust company organized and existing under the laws of this State;
- A national bank, including a federal savings bank, with its principal office in this State;
- An Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an “Edge Act Corporation”), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an “Agreement Corporation”), and maintaining an office in this State;
- A federal branch or agency licensed pursuant to § 4 and § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., to maintain an office in this State;
- A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5 of the Delaware Code, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5 of the Delaware Code; or
- A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

“International Banking Transaction” shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to Section 771 of Title 5 of the Delaware Code or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

- The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;
- The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;
- The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;
- The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;
- The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or
- The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

“International Banking Facility” means a set of asset and liability accounts, segregated on the books and records of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

“National Bank” means a banking association organized under the authority of the United States and having a principal place of business in this State.

“Net Operating Income Before Taxes” means all pre-tax net income from the operations of a banking organization or trust company, including extraordinary items and other adjustments, computed in accordance with principles used by the Federal Financial Institutions Examination Council or other appropriate federal authority.

“Out-of-state bank” has the same meaning as in Section 795 of Title 5 of the Delaware Code, which is (i) a State bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under Delaware law, or (ii) a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) whose organization certificate identifies an address outside Delaware as the place at which its discount and deposit operations are to be carried out.

“Resulting branch in this State of an out-of-state bank” has the same meaning as in Section 1101(a) of Title 5 of the Delaware Code, which is a branch office in this State of an out-of-state bank resulting from a merger as provided in Subchapter VII of Chapter 7 of Title 5 of the Delaware Code, and, in addition, a branch office in this State of an out-of-state bank.

“Securities Business” means to engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities.

“Trust Company” means a trust company or corporation doing a trust company business which has a principal place of business in this State.

3.0 Instructions for Filing the Estimated Alternative Franchise Tax Return

3.1 A banking organization or trust company whose alternative franchise tax liability for the current year is estimated to exceed \$10,000 should file an estimated alternative franchise tax return with the State Bank Commissioner, instead of the estimated franchise tax report in Regulation No. 1104 or No. 1111, and pay estimated alternative franchise tax:

3.1.1 Filing. The estimated alternative franchise tax return shall be filed with the State Bank Commissioner on the first day of March of the current year. Filing an estimated tax return for a particular taxation method is not a mandatory election of that particular method. Additional tax due that results from the underpayment of estimated taxes will be computed on the basis of the final method properly chosen.

3.1.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the estimated alternative franchise tax return required by section 3.1.1., or an estimated franchise tax report pursuant to Regulation No. 1104 or No. 1111, unless the State Bank Commissioner is satisfied that such failure was not willful.

3.1.3 Form. The estimated alternative franchise tax return is contained in this regulation as Form 1114E.

3.1.4 Rounding. All amounts shall be rounded to the nearest dollar.

3.1.5 Calculation of estimated alternative franchise tax. The total estimated alternative franchise tax shall be calculated as follows:

3.1.5.1 The estimated net operating income before taxes of the banking organization or trust company:

3.1.5.2 Plus the estimated net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101;

3.1.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the Delaware Code;

3.1.5.4 Less the estimated net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113;

3.1.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the Delaware Code (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]);

3.1.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the Delaware Code;

3.1.5.7 Plus the estimated location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the Delaware Code, (attach Schedule 2 – Location Benefit Tax Calculation Worksheet);

3.1.5.8 Adjust the subtotal estimated alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the Delaware Code, calculated in accordance with Regulation No. 1109;

PROPOSED REGULATIONS

3.1.5.9 Adjust the subtotal estimated alternative franchise tax for TravelLink tax credits calculated in accordance with Department of Transportation (DelDOT) TravelLink tax credit reporting requirements:

3.1.5.10 Adjust the subtotal estimated alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the **Delaware Code** and the regulations thereunder.

3.1.6 Payment of estimated alternative franchise tax. The estimated alternative franchise tax liability shall be due and payable as follows:

3.1.6.1 40% due on or before June 1 of the current taxable year:

3.1.6.2 20% due on or before September 1 of the current taxable year:

3.1.6.3 20% due on or before December 1 of the current taxable year.

4.0 Instructions for Filing the Final Alternative Franchise Tax Return

4.1 Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization or trust company and the final alternative franchise tax return, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization may file this return on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income. A banking organization or trust company whose original final franchise tax report was filed pursuant to Regulation No. 1105 or No. 1112 may elect to pay the alternative franchise tax pursuant to Section 1101A of Title 5 of the **Delaware Code** by filing an amended final alternative franchise tax return, as provided in this regulation, within 180 days of the due date of the original return.

4.2 Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of \$25 for each day after the due date that the taxpayer fails to file the final alternative franchise tax return required by subsection 4.1, or the final franchise tax report in Regulation No. 1105 or No. 1112, unless the State Bank Commissioner is satisfied that such failure was not willful.

4.3 Form. The final alternative franchise tax return is contained in this regulation as Form 1114F.

4.4 Rounding. All amounts shall be rounded to the nearest dollar.

4.5 Calculation of final alternative franchise tax. The total final alternative franchise tax shall be calculated as follows:

4.5.1 The net operating income before taxes of the banking organization or trust company, (attach a statement of net income that is filed with an appropriate financial regulatory agency):

4.5.2 Plus the net operating income before taxes of any corporation(s) making an election as provided in Regulation No. 1101, (attach Regulation 1101 form – Election To Be Treated As A Subsidiary Corporation Under Sections 1101(f) or 1101A(c)(3) of Title 5 of the **Delaware Code** and a separate report of income for each electing corporation):

4.5.3 Less any deductions set forth in Section 1101A(c)(1) of Title 5 of the **Delaware Code**:

4.5.4 Less the net operating income before taxes of any subsidiary corporation(s) and Edge Act corporation(s) making an election as provided in Regulation No. 1113:

4.5.5 Apportion the entire net income to the State of Delaware in accordance with Section 1101A(c)(6) of Title 5 of the **Delaware Code** (attach Schedule 1 – Apportionment Percentage Calculation Worksheet [apportionment percentage shall be rounded to the nearest tenth of a percent]):

4.5.6 Multiply the elective income tax base by the rate of taxation set forth in Section 1101A(c)(7) of Title 5 of the **Delaware Code**:

4.5.7 Plus the location benefit tax liability calculated in accordance with Section 1101A(d) of Title 5 of the **Delaware Code**, computed as of December 31 of the year prior to the year for which alternative franchise tax is paid (attach Schedule 2 – Location Benefit Tax Calculation Worksheet):

4.5.8 Adjust the subtotal alternative franchise tax for applicable employment tax credits pursuant to Section 1105 of Title 5 of the **Delaware Code** calculated in accordance with Regulation No. 1109, (attach Employment Tax Credit Calculation Worksheet):

4.5.9 Adjust the subtotal alternative franchise tax for TravelLink tax credits calculated in accordance with Department of Transportation (DelDOT) TravelLink tax credit reporting requirements, (attach DelDOT approval and calculation worksheet):

4.5.10 Adjust the subtotal alternative franchise tax for Historic Preservation Tax Credits calculated in accordance with Chapter 18 of Title 30 of the **Delaware Code** and the regulations thereunder, (attach

a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with Section 1105(g) of Title 5 of the **Delaware Code**, and if the credits have been transferred, sold or assigned to the taxpayer by another person, also attach a Certificate of Transfer in accordance with Section 1814(c) of Title 30 of the **Delaware Code**.

5.0 Payment of Final Alternative Franchise Tax

5.1 Taxes owed for the previous calendar year are due and payable on or before March 1 of the following year. Checks or other forms of payment should be made payable or directed to the State of Delaware.

5.2 The amount due and payable on or before March 1 for the previous calendar year shall be the final alternative franchise tax, less any estimated tax payments made for the taxable year, plus any additional tax due to underpayment of estimated alternative franchise tax or installment. If the final alternative franchise tax is not paid by March 1, a penalty for late payment of the final alternative franchise tax shall be assessed.

6.0 Additional Tax Due to Underpayment of Estimated Alternative Franchise Tax or Installment

6.1 In the case of any underpayment of alternative estimated franchise tax or an installment of estimated alternative tax required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of the underpayment for the period of the underpayment. The amount of the underpayment shall be the excess of:

6.1.1 The amount of the estimated alternative franchise tax or installment payment which would be required to be made if the estimated alternative tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return were filed, 80 percent of the tax for such year; over

6.1.2 The amount, if any, of the estimated alternative tax or installment paid on or before the last date prescribed for payment.

6.2 The period of the underpayment shall run from the date the estimated alternative franchise tax or installment was required to be paid to the earlier of the date when such estimated alternative tax or installment is paid or the date of the final payment of tax for the year:

6.3 Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated alternative franchise tax or any installment shall not be imposed if the total amount of all payments of estimated alternative tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated alternative tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

7.0 Penalty - Late Payment of Final Alternative Franchise Tax

7.1 In the case of a late payment of final alternative franchise tax as required by Chapter 11 of Title 5 of the **Delaware Code**, there shall be added to the tax a penalty in an amount determined at the rate of 0.05 percent per day until required payment is made.

8.0 Election to be listed as a "Subsidiary Corporation"

8.1 Regulation No. 1101 shall apply to elections to be treated as a subsidiary corporation pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code**.

8.2 Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to Section 1101A(c)(3) of Title 5 of the **Delaware Code** and has filed with the State Bank Commissioner the required election form in accordance with Regulation No. 1101 shall provide a report of income for each electing corporation as of December 31 of each year to be submitted in conjunction with the final alternative franchise tax return due January 30; provided, however, that a banking organization may file this report on or before any later date allowed by the Federal Financial Institutions Examination Council guidelines for filing its Report of Condition and Income.

8.3 As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 1101 must be completed each year for each Electing Corporation and submitted with the final alternative franchise tax return.

9.0 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30

9.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30

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pursuant to Section 1101A(c)(2) of Title 5 of the **Delaware Code**.

10.0 Election by an Edge Act Corporation to be Taxed in Accordance with Chapter 19 of Title 30

10.1 Regulation No. 1113 shall apply to elections to be taxed in accordance with Chapter 19 of Title 30 pursuant to Section 1101A(c)(4) of Title 5 of the **Delaware Code**.

11.0 Instructions for Filing an Amendment to the Final Alternative Franchise Tax Return

11.1 Filing. To amend a previously filed final alternative tax return, or to elect the alternative franchise tax method as provided in Section 1101A(a) of Title 5 of the **Delaware Code**, place a check mark (✓) in the box provided on Form 1114F and complete the return in accordance with Section 4 of this regulation. Attach a complete copy of the original filing along with a statement of explanation for all changes.

Form 1114E - Estimated Alternative Franchise Tax Return

Chapter 11 of Title 5 of the Delaware Code

<u>Name of Banking Organization or Trust Company</u>	<u>Tax Year</u>
_____	_____
_____	<u>Federal Employer Identification Number</u>
<u>Address</u>	_____
_____	_____

List below corporation(s) electing under Section 1101A(c)(3) of Title 5 of the Delaware Code and include Federal EIN for each. Attach additional pages if necessary.

1. Estimated net operating income before taxes of banking organization or trust company _____
2. Estimated net operating income before taxes of electing corporation(s) _____
3. Estimated net operating income before taxes of corporations taxed under Ch. 19 of Title 30 _____
4. Subtotal net operating income before taxes [add lines 1 and 2 and subtract line 3] _____
5. Deductions:
 - (a) Estimated net operating income before taxes of any non-United States branch office. _____
 - (b) Estimated gross income derived from international banking transactions. _____
 - (c) Estimated gross income of an international banking facility. _____
 - (d) Estimated income earned from business activities _____

- | | | |
|-----|---|---|
| | <u>conducted outside the United States.</u> | |
| (e) | <u>Estimated interest income from obligations of volunteer fire companies.</u> | _____ |
| (f) | <u>Estimated examination fees paid to the Office of the State Bank Commissioner.</u> | _____ |
| (g) | <u>Estimated income derived from acting as an insurer.</u> | _____ |
| 6. | <u>Total estimated deductions</u>
[add lines 5(a) - (g)] | _____ |
| 7. | <u>Estimated entire net income before apportionment</u>
[subtract line 6 from line 4] | _____ |
| 8. | <u>Estimated apportionment percentage</u>
[from Schedule 1-D, Line 6 – attach completed Schedule] | _____ % |
| 9. | <u>Estimated elective income tax base</u>
[multiply line 7 by percentage on line 8] | _____ |
| 10. | <u>Bank income tax table:</u>
(a) First \$50,000,000 of line 9 at 7.0%
(b) Next \$50,000,000 of line 9 at 5.0%
(c) Next \$400,000,000 of line 9 at 3.0%
(d) Next \$800,000,000 of line 9 at 1.0%
(e) Amount of line 9 over \$1,300,000,000 at 0.5% | _____

_____ |
| 11. | <u>Estimated total bank income tax liability</u>
[add lines 10(a) - (e)] | _____ |
| 12. | <u>Estimated total location benefit tax liability</u>
[from Schedule 2, Line 11 - attach completed Schedule] | _____ |
| 13. | <u>Estimated alternative franchise tax liability before tax credits</u> [add lines 11 and 12] | _____ |
| 14. | <u>Tax credits:</u>
(a) <u>Estimated total employment tax credits</u>
(b) <u>Estimated TravelLink tax credits</u>
(c) <u>Estimated historic preservation tax credits</u> | _____

_____ |
| 15. | <u>Estimated total tax credits</u>
[add lines 14(a) - (c)] | _____ |
| 16. | <u>Estimated total alternative franchise tax liability</u>
[subtract line 15 from line 13] | _____ |
| 17. | <u>Payment structure and dates:</u>
(a) <u>June 1 (40% of line 16 due)</u>
(b) <u>September 1 (20% of line 16 due)</u>
(c) <u>December 1 (20% of line 16 due)</u> | _____

_____ |

PROPOSED REGULATIONS

I, the undersigned officer, hereby certify that this estimated report, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

<u>Date</u>	<u>Signature of President, Treasurer or Other Proper Officer</u>	<u>Title</u>
	<u>Print Name</u>	<u>Phone No.</u>
	<u>Print Address</u>	<u>E-mail</u>

Mail Completed Form To:
Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

Form 1114F - Final Alternative Franchise Tax Return
Chapter 11 of Title 5 of the Delaware Code

Amended Final Alternative Tax Return
(check box if filing an amended return)

<u>Name of Banking Organization or Trust Company</u>	<u>Tax Year</u>
<u>Address</u>	<u>Federal Employer Identification Number</u>

List below corporation(s) electing under Section
1101A(c)(3) of Title 5 of the Delaware Code
and attach to tax return Regulation 1101 form – Election
To Be Treated As A Subsidiary Corporation Under
5 Del.C. § 1101(f) or § 1101A(c)(3); include
Federal EIN for each. Attach additional pages if necessary.

1. Net operating income before taxes of banking
organization or trust company – [attach statement
of net income] _____

-
2. Net operating income before taxes of electing corporation(s) – [attach separate report of income for each electing corporation] _____
3. Net operating income before taxes of corporations taxed under Ch. 19 of Title 30 – [attach separate report of income for each electing corporation] _____
4. Subtotal net operating income before taxes [add lines 1 and 2 and subtract line 3] _____
5. Deductions:
- (a) Net operating income before taxes of any non-United States branch office. _____
 - (b) Gross income derived from international banking transactions. _____
 - (c) Gross income of an international banking facility. _____
 - (d) Income earned from business activities conducted outside the United States. _____
 - (e) Interest income from obligations of volunteer fire companies. _____
 - (f) Any examination fee paid to the Office of the State Bank Commissioner. _____
 - (g) Income derived from acting as an insurer. _____
6. Total deductions [add lines 5(a) - (g)] _____
7. Entire net income before apportionment [subtract line 6 from line 4] _____
8. Apportionment percentage [from Schedule 1-D, line 6 – attach completed Schedule] _____ %
9. Elective income tax base [multiply line 7 by percentage on line 8] _____
10. Bank income tax table:
- (a) First \$50,000,000 of line 9 at 7.0% _____
 - (b) Next \$50,000,000 of line 9 at 5.0% _____
 - (c) Next \$400,000,000 of line 9 at 3.0% _____
 - (d) Next \$800,000,000 of line 9 at 1.0% _____
 - (e) Amount of line 9 over \$1,300,000,000 at 0.5% _____
11. Total bank income tax liability [add lines 10(a) - (e)] _____
12. Total location benefit tax liability [from Schedule 2, line 11 – attach completed Schedule] _____

PROPOSED REGULATIONS

- 13. Alternative franchise tax liability before tax credits
[add lines 11 and 12] _____

- 14. Tax credits:
 - (a) Total employment tax credits
[calculated in accordance with Regulation
No. 1109, attach completed Employment
Tax Credit Calculation Worksheet] _____

 - (b) Travelink tax credits
[calculated in accordance with Department of
Transportation (DelDot) reporting requirements;
attach DelDot approval and calculation
worksheet] _____

 - (c) Historic preservation tax credits
[attach Certificate of Completion in accordance
with Section 1105(g) of Title 5 of the Delaware
Code and, if applicable, a Certificate of Transfer
in accordance with Section 1814(c) of Title 30
of the Delaware Code] _____

- 15. Total tax credits
[add lines 14(a) - (c)] _____

- 16. Total alternative franchise tax liability
[subtract line 15 from line 13] _____

- 17. Estimated tax payments:
 - (a) June 1 payment _____
 - (b) September 1 payment _____
 - (c) December 1 payment _____
 - (d) Total estimated tax payments
[add lines 17(a) - (c)] _____

- 18. March 1 final tax payment
[subtract line 17(d) from line 16] _____

- 19. Additional tax due to underpayment of estimated
tax or installment (if applicable) _____
- 20. Penalty for late payment of final tax
(if applicable) _____
- 21. Total final tax payment
[add lines 18, 19 and 20] _____

I, the undersigned officer, hereby certify that this return, including any accompanying schedules and statements, has been prepared in conformance with the appropriate instructions and is true and correct to the best of my knowledge and belief.

Date	Signature of President, Treasurer or Other Proper Officer	Title
------	--	-------

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_____	_____
<u>Print Name</u>	<u>Phone No.</u>
_____	_____
_____	<u>E-mail</u>

<u>Print Address</u>	

Mail Completed Form To:
Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

Schedule 1 – Apportionment Percentage Calculation WORKSHEET

As of December 31, 20__

Schedule 1-A: Real and Tangible Personal Property:

	<u>(a) Within Delaware</u>		<u>(b) Within and Without Delaware</u>	
	<u>(1) Value at January 1, 20__</u>	<u>(2) Value at December 31, 20__</u>	<u>(1) Value at January 1, 20__</u>	<u>(2) Value at December 31, 20__</u>
1. <u>Real and tangible personal property owned</u>	_____	_____	_____	_____
2. <u>Real and tangible personal property rented (eight times annual rental paid)</u>	_____	_____	_____	_____
3. <u>Total property value [add lines 1 and 2]</u>	_____	_____	_____	_____
4. <u>Average property value [add line 3, columns (1) and (2); then divide by 2]</u>	(a) _____	_____	(b) _____	_____

Schedule 1-B: Wages, Salaries, and Other Compensation:

	<u>(a) Within Delaware</u>	<u>(b) Within and Without Delaware</u>
1. <u>Wages, salaries and other employee compensation paid</u>	(a) _____	(b) _____

Schedule 1-C: Receipts:

	<u>(a) Within Delaware</u>	<u>(b) Within and Without Delaware</u>
1. <u>Sales of tangible personal property</u>	_____	_____
2. <u>Rents and royalties from tangible property</u>	_____	_____
3. <u>Patent and copyright royalties</u>	_____	_____
4. <u>Gains from the sale or other disposition of real property</u>	_____	_____

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5.	<u>Gains from the sale or other disposition of tangible property for which an allowance for depreciation is permitted for federal income tax purposes</u>	_____	_____
6.	<u>Interest, fees or penalties in the nature of interest, and loan servicing fees from loans secured by real property, and gains from the sale of loans secured by real property</u>	_____	_____
7.	<u>Interest, fees or penalties in the nature of interest, and loan servicing fees from loans not secured by real property, and gains from the sale of loans not secured by real property</u>	_____	_____
8.	<u>Gross receipts from interest, dividends, gains and other income from investment assets and activities and from trading assets and activities</u>	_____	_____
9.	<u>All other gross receipts</u>	_____	_____
10.	<u>Total receipts</u> [add lines 1 - 9]	(a) _____	(b) _____

Schedule 1-D: Calculation of Apportionment Percentage

1.	(a) <u>Average property value within Delaware</u> [Schedule 1-A line 4(a)]	(a) _____		
	divided by	÷	=	(c) _____ %
	(b) <u>Average property value within and without Delaware</u> [Schedule 1-A line 4(b)]	(b) _____		
2.	(a) <u>Total wages, salaries and other employee compensation paid within Delaware</u> [Schedule 1-B line 1(a)]	(a) _____		
	divided by	÷	=	(c) _____ %
	(b) <u>Total wages, salaries and other employee compensation paid within and without Delaware</u> [Schedule 1-B line 1 (b)]	(b) _____		
3.	(a) <u>Total gross receipts from within Delaware</u> [Schedule 1-C line 10(a)]	(a) _____		
	divided by	÷	x2 =	(c) _____ %
	(b) <u>Total gross receipts from within and without Delaware</u> [Schedule 1-C line 10(b)]	(b) _____		
4.	<u>Total [add lines 1(c), 2(c) and 3(c)]</u>			_____ %

- 5. Number of apportionment factors
[Normally, there are 4 apportionment factors, but the number will be less if a factor is missing. A factor is missing if both its numerator and denominator are zero, but a factor is not missing merely because its numerator is zero.] _____
- 6. Apportionment percentage [divide line 4 by line 5] _____ %

SCHEDULE 2 – LOCATION BENEFIT TAX CALCULATION WORKSHEET

As of December 31, 20 _____

	<u>(a) Assets of banking organization or trust company</u>	<u>(b) Assets directly attributable to the operations of a branch operating entirely outside of Delaware (if applicable).</u>
1. <u>Property</u>	_____	_____
2. <u>Cash</u>	_____	_____
3. <u>Interest bearing balances</u>	_____	_____
4. <u>Securities</u>	_____	_____
5. <u>Loans and leases</u>	_____	_____
6. <u>Trading account assets</u>	_____	_____
7. <u>Securitized assets</u>	_____	_____
8. <u>TOTAL (add lines 1 - 7)</u>	(a) _____	(b) _____
9. <u>Total location benefit tax base [subtract line 8(b) from line 8(a)]</u>		_____
10. <u>Location benefit tax table</u>		
(a) <u>Minimum location benefit tax</u>		\$2,000.00
(b) <u>First \$5,000,000,000 of line 9 at 0.015%</u>		_____
(c) <u>Next \$15,000,000,000 of line 9 at 0.010%</u>		_____
(d) <u>Next \$80,000,000,000 of line 9 at 0.005%</u>		_____
11. <u>Total location benefit tax liability [add lines 10(a) - (d)]</u>		_____

PROPOSED REGULATIONS

PUBLIC SERVICE COMMISSION

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

PUBLIC NOTICE

ORDER NO. 7023

IN THE MATTER OF THE ADOPTION OF
RULES AND REGULATIONS TO IMPLEMENT)
THE PROVISIONS OF 26 DEL.C. CH. 10)
RELATING TO THE CREATION OF A COMPETITIVE
MARKET FOR RETAIL ELECTRIC SUPPLY SERVICE
(OPENED APRIL 27, 1999 AND
RE-OPENED JANUARY 7, 2003)

PSC REGULATION DOCKET NO. 49

AND NOW, to-wit, this 5th day of September, 2006;

WHEREAS, in 1999, the Commission originally adopted "Rules for Certification and Regulation of Electric Suppliers (the "Rules")," for the purpose of establishing the required rules, regulations, and standards for electric suppliers, who, as a result of the Electric Utility Restructuring Action of 1999 ("Restructuring Act"), were allowed to compete with Delmarva Power & Light Company ("DP&L") for the supply of electric service in the State of Delaware (see PSC Order No. 5207 (Aug. 31, 1999)); and

WHEREAS, in PSC Order No. 6098 (Jan. 7, 2003), the Commission directed Staff to undertake a full review of the Rules promulgated in 1999 and report back to the Commission regarding any proposed amendments to the Rules Staff believed were appropriate in light of recent statutory and regulatory changes (i.e., PSC Regulation Docket No. 56 -- renewable portfolio standards and House Bill No. 6 -- amendments to the Restructuring Act), and after consultation with interested electric suppliers; and

WHEREAS, after consulting with electric suppliers, electric distribution companies, and other interested persons, Staff drafted certain proposed changes to the Rules and then conducted several workshops to discuss its proposals with interested parties, resulting in a draft of the proposed new regulation changes being submitted to the Commission for its review and consideration; and

WHEREAS, on March 14, 2006 by PSC Order No. 6869, the Commission directed publication of notice of the proposed amendments to the Rules and set the deadline of May 1, 2006 for the filing of comments by interested parties; and

WHEREAS, the designated Hearing Examiner on May 25, 2006 held a duly noticed public hearing on the proposed amendments to the Rules and the comments received on the proposed changes from the parties participating in the proceeding; and

WHEREAS, after the public hearing, the Hearing Examiner considered additional written comments of the interested parties, as well as Staff's testimony in support of the proposed amendments to the Rules, and issued a report dated July 13, 2006 of his Findings and Recommendations to the Commission; and

WHEREAS, the Commission in public session, reviewed the Hearing Examiner's Report and heard comment on the written exceptions filed to the Report dealing with: (1) the appropriate rescission period; and (2) what customer information, if any, should be made available to third-party suppliers; and

WHEREAS, the Commission (in an abundance of caution) determines that the revised Rules make "substantive" changes from the proposed rules published April 1, 2006, so that, as required by 29 Del.C. Section 10118(c), the amended Rules should now be noticed to allow for another opportunity for comments either in writing or at a public hearing; and

WHEREAS, the Commission has the authority to adopt final regulations in this proceeding pursuant to 26 Del.C. Sections 209, 1002, 1008 and 1019.

Now, therefore, **IT IS ORDERED**:

1. The Commission hereby adopts and incorporates by reference, except as herein set forth below, the Hearing Examiner's Proposed Findings and Recommendations dated July 13, 2006.

2. That the Commission adopts Staff's position supporting the retention of the ten-day rescission period in the proposed final Rules, and does not accept the suggestion that a three-day rescission period is

sufficient to provide a potential new customer with knowledge of his/her right to rescind prior to the extinguishment of the right itself. (Unanimous).

3. That the Commission believes the disclosure of the names and addresses of Delmarva Power & Light Company's customers to other electric suppliers is not by its nature "confidential information," and will facilitate third-party suppliers' attempts to provide competitive services to potential customers in the State of Delaware. Accordingly, the Commission approves the release of names and addresses of Delmarva Power & Light Company's current customers subject to an opt-out provision that provides a customer the opportunity — before the information is disclosed -- to object to the release of the information to other electric suppliers. (Unanimous).

4. That, pursuant to 29 **Del.C.** 10115 and 10118(c), the Commission hereby gives notice that it proposes to adopt the final "Rules for Certification and Regulation of Electric Suppliers" set forth as Exhibit "A" to this Order. Such proposed final Rules would supersede those proposed in Volume 9, Issue 10 of the *Delaware Register of Regulations* (Apr. 1, 2006).

5. That the Secretary shall cause a copy of this Order with the full text of the proposed final rules (Exhibit "A") and the redlined version of these Rules (Exhibit "B") to be filed with the Registrar of Regulations for publication in the *Delaware Register of Regulations*.

6. That the Secretary shall also cause a copy of the Notice, attached hereto as Exhibit "C" to be filed with the Registrar of Regulations for publication in the *Delaware Register of Regulations*.

7. That the Secretary shall cause this form of notice, as attached as Exhibit "C" to be published in the following newspapers, in two-column format, outlined in black, on the following dates:

The News Journal (September 14, 2006)

Delaware State News (September 15, 2006)

The Secretary shall file proof of such publication before October 4, 2006. In addition, the Secretary shall send by United States mail, a copy of such notice to all persons who have filed requests for advance notice of the Commission's regulation-making proceedings.

8. That interested parties may file written suggestions, briefs, comments, objections, or other written materials concerning the proposed standards on or before October 31, 2006.

9. That the Commission shall conduct a public hearing on the adoption of the proposed Rules set forth in Exhibit "A" during its regularly scheduled meeting on Tuesday, November 21, 2006. Persons may present additional comments, materials, or objections at such hearing.

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

BY ORDER OF THE COMMISSION:

ATTEST:

Acting Secretary

EXHIBIT "C"

In PSC Order No. 5207 (Aug. 31, 1999), the Delaware Public Service Commission (the "Commission") adopted "Rules for Certification and Regulation of Electric Suppliers" (the "Rules").

As a result of an inquiry regarding the Rules from an electric supplier, by Order No. 6098 (Jan. 7, 2003), the Commission ordered the Commission Staff to undertake a review of the Rules and report back to the Commission regarding proposed amendments to the Rules. In order to assist Staff in preparing such a report, the Commission provided that electric suppliers, electric distribution companies, and other interested persons could submit proposed changes to the Rules for Staff's review prior to the submission of Staff's report to the Commission.

In compliance with Order No. 6098, Staff conducted several workshops to discuss proposed changes to the Rules. As a result of those workshops, and after consideration of all comments from the various interested parties, Staff produced a draft of the proposed amended Rules (the "Proposed Amended Rules") for the Commission's review and consideration, which were published (9 **DE. Reg.** 1529 (April 1, 2006)).

Written comments were received regarding the Proposed Amended Rules and a public hearing on the proposed amendments was held in May 2006. A Hearing Examiner's Report was issued on July 13, 2006 and in August 2006 the matter came before the Commission for consideration of the Hearing Examiner's Report and the Exceptions taken to it. As a result of the Commission's deliberations, certain revisions to the Proposed Amended

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Rules were made.

These revised Proposed Amended Rules will supersede the Rules proposed in April 2006. As with the earlier proposal, the revised Proposed Amended Rules set forth certain regulations and standards for electric suppliers allowed to compete with Delmarva Power & Light Company ("DP&L") for the supply of electric service in the State of Delaware. The revised Proposed Amended Rules also prescribe the available penalties for violations of the proposed regulations.

You may review the text of the revised Proposed Amended Rules in the October 2006 issue of the *Delaware Register of Regulations*.

You may obtain written copies of the revised Proposed Amended Rules at the Commission's office at the address set forth below. The cost is \$0.25 per page. You may also review an electronic copy of the revised Standards at the Commission's website at www.state.de.us/delpsc (open PSC Order No. 7023). The Commission has the authority to adopt such regulations under 26 **Del.C.** §§209, 1002, 1008, 1019.

Pursuant to 29 **Del.C.** §§1133, 10115, and 10118(c), the Commission now solicits comments, written suggestions, compilations of data, briefs, or other written materials concerning the revised final Standards. If you wish to submit such materials, you should file an original and ten copies at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware 19904
Attn: PSC Reg. Dckt. No. 49

You must file such materials on or before October 31, 2006.

In addition, pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10017, the Commission will conduct a public hearing on the revised Proposed Amended Rules during its regularly scheduled meeting on Tuesday, November 21, 2006. That meeting will begin at 1:00 PM in the Commission's Hearing Room at the above address. You can submit oral presentations or written materials at such hearing.

If you have questions, or desire further information about the matter, you can contact the Commission at 1-800-282-8574 or (302) 739-4333 (including text telephone). You can also send questions by Internet e-mail to david.bloom@state.de.us. If you are disabled and need assistance, please contact the Commission to arrange assistance.

EXHIBIT A

DELAWARE PUBLIC SERVICE COMMISSION

Rules for Certification and Regulation of Electric Suppliers

EFFECTIVE: AUGUST 31, 1999

1.0 Definitions

"**Affiliated Interest**" means:

1. Any person or entity who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of the Applicant;
2. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in 1 above; or
3. Any person or entity, 10% or more of whose voting securities are owned, directly or indirectly, by the Applicant.

"**Ancillary Services**" means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the system.

"**Applicant**" means an entity or person seeking to obtain an Electric Supplier Certificate.

"**Broker**" means an entity or person that acts as an agent or intermediary in the sale or purchase of, but that does not take title to, electricity for sale to Retail Electric Customers.

“**Commission**” means the Delaware Public Service Commission

“**Cramming**” means the practice of charging Customers for services that they have not ordered or have been sold in a deceptive manner such that the customer is not reasonably aware of the nature or price of the service for which he or she is being charged.

“**Delaware Electric Cooperative, Inc.**” or “**Cooperative**” or “**DEC**” or its successor(s).

“**Delmarva Power & Light Company**” or “**Delmarva**” or “**DP&L**” or its successor(s).

“**Distribution Services**” means those services, including metering, relating to the delivery of electricity to a Retail Electric Customer through Distribution Facilities.

“**Distribution Facilities**” means electric facilities located in Delaware that are owned by a public utility that operate at voltages of 34,500 volts or below and that are used to deliver electricity to Retail Electric Customers, up through and including the point of physical connection with electric facilities owned by the Retail Electric Customer.

“**Electric Distribution Company**” or “**EDC**” means a public utility owning and/or operating Transmission and/or Distribution Facilities in Delaware.

“**Electric Supplier**” means an entity or person certified by the Commission, including municipal corporations which choose to provide electricity outside their municipal limits (except to the extent provided prior to February 1, 1999), Broker, Marketer or other entity (including public utilities and their affiliates), that sells electricity to Retail Electric Customers, utilizing the Transmission and Distribution Facilities of an Electric Distribution Company.

“**Electric Supplier Certificate**” or “**ESC**” means a certificate granted by the Commission to Electric Suppliers ~~by the Commission which that~~ have fulfilled the Commission’s certification requirements.

“**Electric Supply Service**” means the provision of electricity or electric generation service.

“**Eligible Energy Resources**” means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

- Solar energy technologies that employ solar radiation to produce electricity;
- Electricity derived from wind energy;
- Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
- Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth’s crust;
- Electricity generated by a fuel cell powered by Renewable Fuels;
- Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
- Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation _____);
- Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation _____);
- Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
 - Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
 - Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility’s average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and
 - Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

“**FERC**” means the Federal Energy Regulatory Commission.

“**GATS**” means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

“Generation Attribute” means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit’s fuel type, geographic location, emissions, vintage, and RPS eligibility.

“Generation Unit” means a facility that converts a fuel or an energy resource into electric energy.

“Marketer” means an entity or person that purchases and takes title to electricity for sale to Retail Electric customers.

“PJM Interconnection, LLC” or **“PJM”** means the Regional Transmission Organization (“RTO”) that is responsible for wholesale energy markets and the interstate transmission of energy throughout a multi-state area, or its successor organization.

“Residential Customer” means a Retail Electric Customer eligible to take Residential services under the Delmarva Power or the Delaware Electric Cooperative’s tariff, currently on file with the Commission.

“Renewable Energy Credit” or **“REC”** means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of Delaware Public Service Commission Regulation Docket No. 56. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

“Renewable Energy Portfolio Standard” or **“RPS”** refers to the Rules and Procedures to Implement the Renewable Energy Portfolio Standard, Delaware Public Service Commission Regulation Docket No. 56.

“Slamming” means the unauthorized enrollment of a customer without the customer’s permission or the unauthorized transfer of a customer to another Electric Supplier.

“Small Commercial Customer” means a Retail Electric Customer taking service under DP&L’s tariff, currently on file with the Commission, Service Classification “Small General Service-Non Demand Rate” or the Cooperative’s tariff, currently on file with the Commission, Service Classification “General Service.” However, for the purposes of these Rules, any Small Commercial Customer who has joined with an affiliated non-Small Commercial Customer or a non-Residential Customer for the purpose of contracting for Electric Supply Service shall be exempt from the definition of a Small Commercial Customer.

“Standard Offer Service” or **“SOS”** means the provision of Electric Supply Service after the Transition Period by a Standard Offer Service Supplier to Customers who do not otherwise receive Electric Supply Service from an Electric Supplier.

“Standard Offer Service Supplier” or **“SOSS”** means an Electric Supplier that provides Standard Offer Service to Customers within an Electric Distribution Company’s service territory after the Transition Period.

“State” means The State of Delaware.

“Telemarketing” means any unsolicited telephone calls initiated by, or on behalf of, an Electric Supplier to a Customer in order to market Electric Supply Service.

“Transition Period” means the period of time described in 26 **Del.C.** §1004, which: begins October 1, 1999 and ends May 1, 2006 for Delmarva’s customers; and begins April 1, 2000 and ends March 31, 2005 for all Cooperative customers.

“Transmission Facilities” means electric facilities located in Delaware and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to Customers (including any Customers taking electric service under interruptible rate schedules as of December 31, 1998) up through and including the point of physical connection with electric facilities owned by the Customer.

“Transmission Services” means the delivery of electricity from supply sources through Transmission Facilities.

2.0 Certification of Electric Suppliers

2.1 All Electric Suppliers must obtain an Electric Supplier Certificate from the Commission to sell electric supply service to or arrange the purchase on behalf of Retail Electric Customers prior to offering contracts to Customers or commencing service.

2.1.1 Certification Requirement. All Electric Suppliers shall file with the Commission an original and ten (10) copies of an Application for an Electric Supplier Certificate. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial and operational ability to adequately serve the public.

2.1.1.1 Authority to Do Business In Delaware. Each Applicant shall provide

documentation from the Delaware Secretary of State and/or the Delaware Division of Revenue that it is legally authorized and qualified to do business in the State of Delaware.

2.1.1.2 Resident Agent. Pursuant to 26 **Del.C.** §401, each Applicant shall file a designation in writing of the name and post-office address of a person resident within the State upon whom service of any notice, order or process may be made. This information must be updated if changed.

2.1.1.3 Performance Bonds. Each Applicant shall submit a copy of their performance bond or guarantee that they have obtained as security to the Electric Distribution Company if required in the Service Agreement between the Applicant and the Electric Distribution Company.

2.1.1.4 Compliance with Regional Requirements. Each Applicant, except for Brokers, must demonstrate that it has the technical ability to secure generation or otherwise obtain and deliver electricity through compliance with all applicable requirements of PJM. Brokers must submit relevant evidence of technical fitness to conduct their proposed business. Any Broker arranging the purchase of Electric Supply Service ~~for their Customers~~ must procure electricity from an entity that complies with PJM's requirements and is a Certified Electric Supplier in the State.

2.1.1.5 Financial, Operational, Managerial and Technical Ability. Each Applicant shall be required to present substantial evidence supporting their financial, operational, managerial and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

2.1.1.5.1 Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.

2.1.1.5.2 Brief description of the nature of business being conducted, including types of customers to be served, services provided and geographic area in which services are to be provided.

2.1.1.5.3 A list of states in which Applicant or any of its affiliated interests is presently selling electric supply service to Retail Electric customers and a list of states in which Applicant or any of its affiliated interests has pending applications to sell electric supply service to Retail Electric customers.

2.1.1.5.4 A list of states in which Applicant or any of its affiliated interests has been denied approval by a State Commission to sell electricity to Retail Electric Customers or has had its authority revoked.

2.1.1.5.5 Relevant operational experience of each principal officer responsible for Delaware operations.

2.1.1.5.6 A copy of any FERC approval as a Marketer or date and docket number of the application to FERC.

2.1.1.5.7 If the Applicant requires deposits, advance payments, prepayments, financial guarantees or the like from customers, then the Applicant must secure a bond with corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The amount of the bond will be the ~~lesser~~ greater of (i) ~~450~~ 150 percent of the projected amount of deposits and advances for the next one year period; or (ii) \$50,000. If at any time the actual amount of the deposits and advances held by the Applicant exceeds the amount projected, the amount of bond shall be increased to comply with the requirement in the preceding sentence.

2.1.1.5.8 All new Applicants, except Brokers, shall demonstrate in their applications that they possess a minimum of \$100,000 of assets in excess of encumbrances or a minimum of \$100,000 in cash, cash equivalents, or financial instruments that are reasonably liquid and readily available to meet their costs of providing electricity to Customers or any combination thereof.

2.1.1.5.9 Demonstration of cash or cash equivalents can be satisfied by the following:

2.1.1.5.9.1 Cash or cash equivalents, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;

2.1.1.5.9.2 Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;

2.1.1.5.9.3 Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.4 Letter of credit, issued by a reputable bank or other

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financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.5 Line of credit, issued by a reputable bank or other

financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.6 Loan, issued by a qualified subsidiary, affiliate of

Applicant, or a qualified corporation holding controlling interest in the Applicant, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission, and payable on an interest-only basis for the same period;

2.1.1.5.9.7 Guarantee, issued by a corporation, co-partnership, or

other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the Applicant by the Commission;

2.1.1.5.9.8 Guarantee, issued by a qualified subsidiary, affiliate of

Applicant, or a qualified corporation holding controlling interests in the Applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the Applicant by the Commission; and,

2.1.1.5.9.9 Identifiable physical assets set forth in a balance sheet or

similar statement.

2.1.1.5.9.10 The Applicant shall disclose whether the entity or any of

its affiliated interests has filed for bankruptcy in the past 24 months.

2.1.1.5.9.11 The Commission or its Staff may consider any other

information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.

2.1.1.6 Verification of Application. The Application must be verified by a principal or officer of the Applicant.

2.1.1.7 Consent to the Jurisdiction. All Electric Suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.

2.1.1.8 Other Requirements:

2.1.1.8.1 Legal name as well as the name under which the Applicant

proposes to do business in Delaware;

2.1.1.8.2 State of incorporation, business address, and address of the

principal officer;

2.1.1.8.3 Name, title and telephone number of a regulatory contact person;

2.1.1.8.4 A toll-free telephone number of customer service department;

2.1.1.8.5 Description of the Applicant's experience in the energy market

and a brief description of the services its plans to offer in Delaware and the type of customers it plans to serve; and

2.1.1.8.6 Statement detailing any criminal activities of which the Applicant

or any of its affiliated interests has been charged or convicted, or which the principal or corporate officers of the Applicant or any of its affiliated interests has been charged or convicted.

2.1.1.9 Contracts. ~~The Applicant shall provide the Commission with a copy of its standard contract that it proposes to use with its prospective customers. At the time of the filing, the Applicant shall either provide its Standard Contract for Residential and Small Commercial Customer or a link to it on the Applicant's website. Such standard contract shall be filed twenty one (21) calendar days prior is subject to use by review by the Applicant Commission Staff. and Commission Staff shall have the authority at any time to require changes to a standard contract,~~ if Staff determines that such contract is not consistent with these Rules for Certification and Regulation of Electric Suppliers ("Rules"), then Staff shall have the authority to require changes in order to make consistent with these Rules or Electric Supplier faces revocation of its Electric Supplier Certificate by the Commission after a hearing. Such contract shall be in clear and plain language and include explicit terms and conditions which at a minimum contain the following:

2.1.1.9.1 A clear statement of the duration of the contract;

2.1.1.9.2 The price stated in cents per kWh or a clear and unambiguous

statement of the precise mechanism or formula by which the price will be determined;

2.1.1.9.3 A complete list of any other fees, including early termination

penalties, late fees, and interest charges, which can be imposed on the customer, including but not limited to the magnitude of the fees and the specific conditions under which such fees can be imposed;

2.1.1.9.4 A statement of the Electric Supplier's termination rights, which shall explain the specific conditions, under which the Electric Supplier may terminate service. At a minimum, the Electric Supplier shall provide the Residential or Small Commercial Customer with at least 30 days notice of termination of the contract and procedures to maintain ongoing service;

2.1.1.9.5 The Electric Supplier's local or toll-free telephone number; ~~the name, address and local or toll-free telephone number of a company contact person; the Electric Distribution Company's emergency telephone number~~ web address, if applicable; and the Commission's address and telephone number;

2.1.1.9.6 A statement informing the ~~customer that if he/she relocates outside his/her~~ Residential or Small Commercial Customer that, because of relocation outside of their current EDC's service territory, they current EDC area, he/she he/she may terminate his/her his/her contract with his/her his/her Electric Supplier with no termination after providing fee upon a 30-day notice in writing to the Electric Supplier.

2.2 Notice. Each Applicant, except Brokers, shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

2.3 Application Fee. A non-refundable application fee of \$750 shall be submitted with the application for Certification.

2.4 Incomplete or Abandoned Applications. Applications that do not include the necessary fees, supporting documentation or information may be rejected. The Commission Staff will provide the Applicant with a list of deficiencies and the Applicant will be given time to provide the necessary information to complete its certification. However, an incomplete or abandoned application will be closed four (4) months after the filing date, unless such time frame is extended by the Commission.

2.5 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission may, for good cause, waive any of the requirements of these Rules that are not required by statute. The waiver may not be inconsistent with the purpose of these Rules or Chapter X of Title 26 of **Del.C.**

3.0 Post-Certification Requirements

3.1 Term of ESC. ESCs are valid until revoked by the Commission or abandoned by the Electric Supplier after the requisite notice to the Commission and to their customers.

3.2 Minimum Length of Electric Supply Service by Electric Supplier. For each Retail Electric Customer class, each Electric Supplier must offer Electric Supply Service to each of its Retail Electric Customers for a minimum period of one billing cycle.

3.3 Transfer or Abandonment of ESC. The transfer of an ESC is prohibited without express Commission Order. No Electric Supplier shall abandon Electric Supply Service within the State without 60 days written notice to the Commission, the affected Electric Distribution Companies, and its Retail Electric Customers.

3.4 Contracts and Revised Contracts. An Electric Supplier shall supply Electric Supply Service to a Residential or a Small Commercial Customer only by a standard contract containing the provisions described in Section 2.1.1.9, of these Rules. The contract must be signed or verifiable by some other means of authorization by the Residential or Small Commercial Customer. If an Electric Supplier offers a Retail Electric Customer a check, prize, or other incentive which requires a signature, that signature cannot be used as the contract signature. A Residential or Small Commercial Customer has ten (10) calendar days from the day the EDC sends the confirmation letter to rescind his/her selection. If the Electric Supplier makes substantive changes to its standard contract for Electric Supply Service to Residential or Small Commercial Customers, the Electric Supplier must notify the Commission Staff to allow for review and comment. If Staff determines that such contract is not consistent with these Rules, Commission Staff shall have the authority at any time to require changes to a standard contract for Residential or Small Commercial Customers.

3.5 Price Terms. Any price term shall not be inconsistent with pricing terms in a Residential or Small Commercial Customer's contract with their Electric Supplier. The Electric Supplier must provide thirty (30) days written notice to its Residential or Small Commercial Customer(s) of any price term changes.

3.6 Information that Must be Provided to a Customer by the Electric Supplier. The Electric Supplier must provide the Retail Electric Customer with a copy of its contract which includes the terms and conditions of service.

3.7 Customer Information. An Electric Supplier may request a list from an Electric Distribution Company which contains Retail Electric Customer's name, service address and mailing address. A Retail Electric

PROPOSED REGULATIONS

Customer may elect to opt out of the list.

3.8 Marketing and Advertising.

3.8.1 Pursuant to 26 **Del.C.** §1012(b) and as further defined in Section I of these Rules, all Electric Suppliers ~~are prohibited from using Telemarketing to solicit customers. This prohibition does not include initial contact by any medium other than a voice telephone call or a Customer's telephone response to any non-telephone initial contact.~~ shall not solicit Retail Electric Customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

3.8.2 An Electric Supplier or its marketing or advertising agent shall not make misrepresentations or use deceptive practices in its direct solicitations, advertising or marketing materials.

3.8.3 An Electric Supplier or its marketing or advertising agent must comply with all federal, state or local laws applicable to advertising or marketing products or services.

3.9 Reports to be Provided to the Commission. All Electric Suppliers shall provide such information concerning Delaware operations to the Commission as the Commission may from time to time request, including any reporting requirements contained herein. Information provided pursuant to this paragraph and designated "proprietary" or "confidential" shall be held in accordance with paragraph 1 in Section X of these Rules, and shall be afforded proprietary treatment subject to the provisions of the Rules, Commission regulations, and Delaware Law.

3.10 Fees and Assessments. ~~ESCs~~ Electric Suppliers must pay the applicable fees and assessments under 26 **Del.C.** §1012(c)(2). ~~ESCs~~ Electric Suppliers must also file any applicable reports required under 26 **Del.C.** §115(e). The ~~ESC~~ Electric Supplier, except Brokers, must also pay the Public Utilities Taxes pursuant to 30 **Del.C.** Chapter 55.

3.11 Record Retention. All Electric Suppliers will retain customer account records for a period of two (2) years.

4.0 Billing and Metering

4.1 Billing Options.

4.1.1 Each Retail Electric Customer in Delmarva's service territory has the right to choose to receive separate bills from Delmarva Power & Light Company and from its Electric Supplier (if the Electric Supplier provides a separate billing), or to receive a combined bill from either Delmarva or its Electric Supplier (if the Electric Supplier provides a consolidated billing option), for Electric Supply, Transmission, Distribution, Ancillary and other Services, consistent with these Rules. If the Retail Electric Customer does not elect a billing option, Delmarva will be responsible for billing the Retail Electric Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Electric Supplier.

4.1.2 In the Delaware Electric Cooperative's service territory, the Cooperative will bill each Retail Electric Customer for Electric Supply, Transmission, Distribution, Ancillary and other Services, regardless of the Retail Electric Customer's Electric Supplier.

4.2 Bill Contents. The bill should be easy to understand and must contain the following information:

4.2.1 The name, address, and local or toll-free telephone number of the Electric Supplier;

4.2.2 If different from the Electric Supplier, the name, address and toll-free telephone number of the Electric Distribution Company;

4.2.3 The due date for payment;

4.2.4 If applicable an itemized list of each service or product billed for the current billing period including charges for the Public Purpose Programs and a Competitive Transition Charge (if applicable) or other agreed to charges;

4.2.5 Electricity consumption including whether the consumption was based on actual recorded usage or estimated usage;

4.2.6 The actual cents per kWh (or the appropriate block charges or other pricing mechanism) charged to the Retail Electric Customer for the Retail Electric Customer's actual usage (or estimated usage) of electricity for the current billing period;

4.2.7 The total charge for each service or product;

4.2.8 The amount of payment or other credit applied to Retail Electric Customer's outstanding balance during the billing period;

4.2.9 The amount still owed by the Retail Electric Customer from the previous billing period;

4.2.10 Appropriate taxes and fees; and

4.2.11 If applicable, late fees as defined in the contract.

4.3 Metering.

4.3.1 During the Transition Period, Delmarva will continue to own all meters and perform all meter reading functions. After the Transition Period, or earlier if requested by Delmarva, the Commission can permit others to provide some or all of the metering functions on a competitive basis.

4.3.2 The Delaware Electric Cooperative will continue to own and operate all meters and perform meter reading functions.

5.0 Customer Protection

5.1 Procedures to be followed by the Retail Electric Customer:

5.1.1 A Retail Electric Customer should first notify the Electric Supplier of their complaint for resolution of their Electric Supply Services. In the event of an electricity-related emergency, such as a power outage, or in the event of problems related to a Retail Electric Customer's EDC, the Retail Electric Customer should contact their EDC.

5.1.2 If the Retail Electric Customer and Electric Supplier are not able to come to a resolution, the Retail Electric Customer may file a complaint with the Commission as described in Rules 14 and 15 of the Rules of Practice and Procedure of the Commission.

5.2 Procedures to be Followed by the Electric Supplier:

5.2.1 If a Retail Electric Customer notifies the Electric Supplier that they have a complaint, the Electric Supplier shall use good faith efforts to respond to and resolve the complaint.

5.2.2 An Electric Supplier shall have customer service representatives to handle its Retail Electric Customer's inquiries and complaints.

5.2.3 If the Retail Electric Customer and Electric Supplier are not able to come to a resolution, the Electric Supplier will inform the Retail Electric Customer that they may contact the Commission.

5.2.4 The Electric Supplier shall prepare and maintain a report of these complaints and keep these reports on file for a period of two (2) years. Upon request by the Commission or its Staff or the Division of Public Advocate, an Electric Supplier shall furnish a copy of such report to the Commission. The report shall contain the following information:

5.2.4.1 Type of complaint;

5.2.4.2 Date of complaint;

5.2.4.3 Resolution; and,

5.2.4.4 Date resolved.

5.3 Slammings. An Electric Supplier must obtain verifiable authorization from the Retail Electric Customer before switching Electric Supply Service. If a Retail Electric Customer believes that their Electric Supply Service has been switched without authorization, the Retail Electric Customer may request that the Electric Supplier provide evidence of the authorization and verification. The Electric Supplier must submit this within five (5) business days if feasible, but no longer than 15 business days of the request. If the Retail Electric Customer is not satisfied with this response, the Retail Electric Customer may also file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.4 Cramming. If the Commission determines that an Electric Supplier has billed unauthorized charges to a Retail Electric Customer, that Electric Supplier may be subject to penalties that may be imposed by the Commission through a hearing process. An Electric Supplier that has imposed unauthorized charges on a Retail Electric Customer must void and/or refund all of those charges to the Retail Electric Customer.

5.5 General Retail Electric Customer Protections. An Electric Supplier, including Brokers, shall not engage in fraudulent or improper activities, nor shall it disseminate any consumer information obtained pursuant to Section 3.7, and may be subject to penalties as described in Section 10.0 of these Rules.

6.0 Green Power and Renewable Resources

6.1 For the purposes of this Section, a Green Power Product is defined as an Electric Supply Service which is marketed or otherwise advertised as having a generation resource mix consisting of Eligible Energy Resources above the current Compliance Year's Cumulative Minimum Percentage found in Commission Regulation No. 56.

6.2 Electric Suppliers offering a Green Power Product shall register with the PJM-EIS GATS, or its successor. Electric Suppliers shall keep the account in good standing and shall be subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

6.3 Electric Suppliers offering a Green Power Product shall submit RECs equal to the marketed or

otherwise advertised generation resource mix consisting of Eligible Energy Resources as part of their filing of the annual Retail Electricity Supplier's Verification of Compliance in the State of Delaware Renewable Energy Portfolio Standard Report.

6.4 When requested by a Retail Electric Customer or providing information regarding Green Power through marketing and advertising material(s) or solicitation(s), an Electric Supplier must label its fuel resource mix in a manner that accurately describes its electric generating resources. The Electric Supplier must also inform the Retail Electric Customer, in writing, that the Electric Supply Service the Retail Electric Customer receives will be used to meet the Electric Supplier's RPS requirements.

6.5 An Electric Supplier shall not market, advertise, or solicit to Customers on the basis that its product is environmentally beneficial unless it meets the minimum resource mix requirement of paragraph 2 of this Section.

6.6 Electric Suppliers offering Green Power shall have to meet disclosure of fuel resource mix stated in Section 7.0 of these Rules.

7.0 Disclosure of Fuel Resource Mix

7.1 Each Electric Supplier, except Brokers, shall file a report with the Commission disclosing the aggregate proportions of fuel resource mix for the electricity supplied to its customers in Delaware for each quarter during the year. Such reports shall be filed by last date of the month succeeding each quarter. The reports shall include, but are not limited to:

7.1.1 The total number of Retail Electric Customers by each Retail Electric Customer class served during that quarter;

7.1.2 The total amount of electricity (kWh or MWh) supplied to each Retail Electric Customer class; and,

7.1.3 The fuel resource mix by percentage for each resource.

7.2 ~~The Commission will keep the information reported under paragraphs 1(a) and 1(b) confidential. Information to paragraph 1(c) shall not be held confidential, and the Commission or an Electric Supplier shall disclose such information to any member of the public requesting it. Each Electric Supplier shall also disclose the information under paragraph 1(c) to its Customers no less frequently than on a quarterly basis. Information reported under paragraph 1(c) may be utilized in any consumer education program developed in accordance with 26 Del.C. § 1014(c). Each Electric Supplier shall also disclose the information under paragraph 7.1.3 to its Retail Electric Customers annually via bill inserts and each other quarter by providing information on the Retail Electric Customer's bill for that quarter directing the Retail Electric Customer to obtain the information on the Electric Supplier's website or by a telephone request. Each Electric Supplier must maintain and update the information in paragraph 7.1.3 as required by 26 Del.C. §1012. Information reported under paragraph 7.1.3 may be utilized in any consumer education program developed in accordance with 26 Del.C. §1014 (c).~~

7.3 If an Electric Supplier, except Brokers, cannot provide the data in paragraph 1(c) specifically for its customers Retail Electric Customers in Delaware, then the Commission will accept comparable percentages for the load served in PJM.

8.0 Net Energy Metering

8.1 Each Electric Supplier providing Electric Supply Service to Residential, Small Commercial and Medium Commercial Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.1.1 The Retail Electric Customer owns or operates the electric generation facility;

8.1.2 The facility uses renewable resources;

8.1.3 The facility has a capacity of not more than 25 kilowatts;

8.1.4 The facility is not used by the Retail Electric Customer to supply property other than the Customer's premises.

8.2 Net metering is the interconnection with Distribution Facilities through a single meter that runs forward and backward in order to measure net energy flow during a billing period.

8.3 If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer such additional power in the following billing period at least at the same price the Electric Supplier charged or would have charged the Customer under the contract.

8.4 Any requirements necessary to permit interconnected operations between the Retail Electric Customer's generating facility and the EDC, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the EDC.

9.0 Customers Returning to EDC or SOS Supplier for Electric Supply Service

The procedures for a Retail Electric Customer's return to an EDC during the Transition Period and to an EDC if it is the SOS Supplier after the Transition Period for Electric Supply Service shall be in accordance with the Commission's order for each EDC's individual electric restructuring plan.

10.0 Other General Rules

10.1 Proprietary Information. Under Delaware's Freedom of Information Act, 29 **Del.C.** ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity which submitted the information with reasonable notice and an opportunity to show why the information should not be released.

10.2 Failure to Comply with these Rules. The failure by any Electric Supplier to comply with these requirements and the requirements in other Sections of these Rules may result in penalties, including monetary assessments, suspension or revocation of the Electric Supplier's ESC, or other sanction as determined by the Commission.

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.

**DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**

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

REGULATORY IMPLEMENTING ORDER**101 Delaware Student Testing Program****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** 101 Delaware Student Testing Program in order to comply with Senate bill 320 which amends 14 **Del.C.** §151 and §153. The turn around time for reports on security and confidentiality investigations has also been extended to 20 working days.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 24, 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 were concerned that it was not clear in 1.0 that 2nd grade students are not assessed in writing but was clear in other sections of the regulation. Section 1.0 has been edited to be clear that 2nd grade students are not passed in writing. Upon comment from the State Board of Education Section 4.1.1 has been eliminated because it is redundant.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 101 in order to comply with Senate bill 320 which amends 14 **Del.C.** §151 and §153 concerning student assessment. The turn around time for reports on security and confidentiality investigations has also been extended to 20 working days.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 101. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 101 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 101 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** 101 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 101 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.** §151 and §153 on September 21, 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 21st day of September 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 21st day of September 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. Claiborne D. Smith

101 Delaware Student Testing Program**1.0 Definition**

The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades ~~[K 2 to 10 in the areas of reading, writing and mathematics 2 to 10 in the areas of reading and mathematics, grades 3 to 10 in the area of writing]~~ and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

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

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

2.0 Levels of Performance

There shall be five levels of student performance relative to the State Content Standards on the

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

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

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

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

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

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

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

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

3.0 Other Indicators of Student Performance

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

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

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

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

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

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

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

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

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

4.0 Individual Improvement Plan (IIP)

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

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

~~[4.1.4 Students assessed on the DSTP in grades 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.0 High School Diploma Index as Derived from the 10th Grade Assessments Pursuant to 14 Del.C. §152

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.0 Security and Confidentiality

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

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

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

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

7.4 Procedures for Reporting Security Breaches

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

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

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

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

7.4.2.3 Within ~~40 days~~ 20 working days of the receipt of the report from the District Test

Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and to any witnesses.

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

7.4.2.5 The ruling shall be delivered within ~~10 days~~ 20 working days of the receipt of all reports and information and records shall be kept of all investigations.

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

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

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

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

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

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

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

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

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

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

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

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

9.0 Invalidations and Special Exemptions

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

9.1.1 Reporting of situations that occur during testing.

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

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

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

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

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

9.1.2 Consequences of invalidations.

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

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

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

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

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

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

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

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

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

9.2.3 Request for special exemptions based on emergency.

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

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

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

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

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

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

9.2.4 Consequences of Special Exemptions.

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

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

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

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

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

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

745 Criminal Background Check for Public School Related Employment

I. Summary of the Evidence and Information Submitted

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

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 24, 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. Both Councils commented on the confidentiality provisions in 6.0 concerning communications between the three persons with access to the

criminal background check records. The Department added the words and employ proper precautions to insure that interoffice communications remain confidential to 6.1.1 and has also added the words information and prior to the word records in 6.1 as recommended by both Councils.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 745 to include charter schools and to require a criminal background check when employees change school districts and or change between school districts and charter schools. The amendments also change the number of days that substitute teachers must work in one year to avoid additional criminal background checks from year to year.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 745. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 745 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 745 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** 745 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 745 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 September 6, 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 13th day of September 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

745 Criminal Background Check for Public School Related Employment

1.0 Applicability of Regulations

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

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

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

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

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

1.2.1 Instructors in adult corrections institutions;

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

- 1.2.3 ~~Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts, and the Delaware Institute for the Arts in Education; and~~
- 1.2.4 ~~Substitute food service workers.~~

1.0 Definitions

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

“Covered Personnel” means the following:

- All final candidates for public school related employment for compensation;
- All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and
- All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility (EPER position) in public schools whether the person receives compensation or not.

Notwithstanding the above definition of Covered Personnel the following persons are not subject to these regulations:

- Instructors in adult corrections institutions;
- Instructors in adult education programs involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and GED programs who do not service students under age 18;
- Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts and the Delaware Institute for the Arts in Education; and
- Substitute food service workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reconsideration as set forth in 5.0.

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

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

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

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

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

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

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

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

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

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

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

4.4 ~~4.3 A person not exempted in 4.2 or 4.3 who is placed in a covered personnel position by another Delaware school district~~ A person who transfers between Delaware public school districts or charter schools and is placed in a Covered [Personal Personnel] position shall comply with 11 **Del.C.** §8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, charter school or out of state school, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 **Del.C.** §8570, et seq., and these regulations.

5.0 Determination of Suitability and Appeal Process

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

5.2 The school district or charter school shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person's response to the criminal history information. If a determination is made to deny a person placement in a ~~covered personnel~~

Covered Personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as ~~set forth in [5.2.1 through 5.2.3]~~ 5.3.1 through 5.3.3.

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

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

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

5.3 Appeal for Reconsideration

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

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

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

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

6.0 Confidentiality

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

6.1.1 Access to criminal background check records, and letter[s] of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the district superintendent or charter school director and the district or charter school chief personnel office and one person designated to assist in the processing of criminal background checks, who will receive training in confidentiality **[and ,]** be required to sign an agreement to keep such information confidential**]; and employ proper precautions to insure that interoffice communications remain confidential.]**

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

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

7.0 Penalties

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

8.0 Subsequent Criminal History Information

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

8.2 If subsequent criminal history information is mistakenly directed to a district or charter school other

than the current district or charter school of ~~covered personnel~~ Covered Personnel, the information shall be forwarded immediately to the employing district or charter school by the receiving district superintendent, charter school director or district or charter school chief personnel officer.

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

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

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

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

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

I. Summary of the Evidence and Information Submitted

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

The new regulation generally follows the 2005 *National School Transportation Specifications and Procedures (NSTSP)*. The NSTSP is revised every five years by the National Congress on School Transportation. Each state sends a delegation to the congress, and ours is made up of seven representatives from the school districts, contractors and the DOE. The NSTSP incorporates new technologies and school bus safety improvements. Since its publication, the Delaware delegation met several times to review proposed changes. Additional coordination was made with the Division of Motor Vehicles and the three major school bus vendors and their technical representatives. Minor changes were made to 2.9.3 and to 2.26 and 2.26.3.1 in the final version to improve the clarity of the sections.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on July 24, 2006, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 DE Admin. Code 1103 because a new regulation is needed to provide specifications for new school buses that will be built after January 1, 2007. It follows the format of 14 DE Admin. Code 1102 and 1101 which include standards for school buses built in prior years.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 **DE Admin. Code** 1103. Therefore, pursuant to 14 **Del.C.** Ch. 29, 14 **DE Admin. Code** 1103 attached hereto as *Exhibit "B"* is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1103 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 1103 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 1103 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch. 29 on September 21, 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 21st day of September 2006.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 21st day of September 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

* Please note that no changes, except as noted to 2.9.3 and to 2.26 and 2.26.3.1 below, were made to the regulation as originally proposed and published in the August 2006 issue of the *Register* at page 259 (10 DE Reg. 259). Therefore, the final regulation, in its entirety, is not being republished. Please refer to the August 2006 issue of the *Register* or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:
<http://www.doe.k12.de.us/>

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

(Break in Continuity of Sections)

2.9 Color

2.9.1 The school bus body shall be painted National School Bus Yellow (NSBY). (See NSTSP,

Appendix B)

2.9.2 The body exterior paint trim, bumper, lamp hoods, rub rails, emergency door arrow, and lettering shall be black. (See illustration in NSTSP, Appendix B)

FINAL REGULATIONS

2.9.3 Except for the front and rear roof caps, [which shall be NSBY] the roof of the bus may be painted white. [~~(See NSTSP, Appendix B)~~ The white roof shall terminate no lower than 6 inches above the dip rail.]

(Break in Continuity of Sections)

2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant handrails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed with lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See "Storage Compartment", this section)

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B.

2.25.4 School buses with a capacity of 36 passengers or greater shall be equipped with a sound proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.5 Buses shall have mar proof sidewalls.

2.25.6 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.6.1 Head protection requirements of FMVSS No. 222, School Bus Passenger Seating and Crash Protection, where applicable:

2.25.6.2 Have a maximum rated capacity displayed for each compartment:

2.25.6.3 Be completely enclosed and equipped with latching door (both door and latch sufficient to withstand a pushing force of 50 pounds applied at the center of the door):

2.25.6.4 Have all corners and edges rounded with a minimum radius of 1 inch or be padded equivalent to door header padding:

2.25.6.5 Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and

2.24.6.6 Have no protrusions greater than ¼ inch.

2.26 Lamps and Signals [may be incandescent, sealed beam, halogen or light emitting Diode (LED).]

2.26.1 Interior lamps which illuminate the aisle and stepwell shall be provided. The stepwell lamp shall be illuminated by an entrance door operated switch, to illuminate only when headlights and clearance lights are on and the entrance door is open.

2.26.2 Body instrument panel lamps shall be controlled by an independent rheostat switch.

2.26.3 School bus alternately flashing signal lamps shall be provided:

2.26.3.1 The bus shall be equipped with two red lamps at the rear of vehicle and two red lamps at the front of the vehicle. [~~Lamps may be the sealed beam, halogen type or Light Emitting Diode (LED).~~]

2.26.3.1.1 Visors or hoods, black in color, are only required on non flush mounted lights and shall have a minimum depth of 4 inches.

2.26.3.2 In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at same level, but closer to the vertical centerline of bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually. The red lamps are automatically energized and amber lamps are automatically de energized when stop signal arms are extended or when bus entrance door is opened. An amber pilot lamp and a red pilot lamp shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

(Break in Continuity of Sections)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))
14 **DE Admin. Code** 1537

REGULATORY IMPLEMENTING ORDER

1537 Standard Certificate Bilingual Teacher (Spanish) Secondary (K to 12)

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1537 Standard Certificate Bilingual Teacher K to 12. Regulation 1537 has been revised in collaboration with the Department of Education Education Associate for ESOL and Bilingual Education, with her advisory committee, and with the University of Delaware, which is the only Delaware institution of higher education which offers a program in bilingual education.

A public notice ad was placed in the June 20, 2006 edition of the *Delaware State News* and the *News Journal* soliciting public comment. To date, no comment has been received

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1537 of the Administrative Code of Regulations of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7TH DAY OF SEPTEMBER, 2006

Harold Roberts, Chair
Sandra Falatek
Karen Gordon
Barbara Grogg
Lori Hudson
Mary Mirabeau
Karen Schilling-Ross
Kathleen Thomas

Edward Czerwinski
Mary Furbush
Richard Gregg
Leslie Holden
Carla Lawson
Gretchen Pikus
Michael Thomas
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF SEPTEMBER, 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President
 Richard M. Farmer, Jr., Vice President
 Mary B. Graham, Esquire
 Gregory A. Hastings
 Barbara Rutt
 Dennis J. Savage
 Dr. Claibourne D. Smith

* Please note that no changes, except as noted to 3.0 below, were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 39 (10 DE Reg. 39). Therefore, the final regulation, in its entirety, is not being republished. Please refer to the July 2006 issue of the *Register* or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:
<http://www.doe.k12.de.us/>

(Break in Continuity of Sections)

3.0 Standard Certificate

The Department shall issue a Standard Certificate as a Bilingual Teacher [~~K to 12~~ **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 Bilingual Education; or

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

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

3.1.5 Demonstrating oral and written proficiency in English and the target language of the bilingual program, and satisfactory completion of fifteen (15) graduate or undergraduate credits in ESL or Bilingual education, as more specifically set forth in 3.1.5.1 through 3.1.5.6. With approval of a Committee comprised of the candidate's principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experiences may be substituted for no more than nine (9) of the required credits.

3.1.5.1 Methods of Teaching English as a Second Language;

3.1.5.2 Second language Acquisition;

3.1.5.3 Teaching Literacy for English Language Learners;

3.1.5.4 Second Language Testing;

3.1.5.5 Structure of the English Language; and

3.2 For applicants applying after December 31, 2005, where a PRAXIS™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination. Where no PRAXIS™ II test is available, nationally recognized equivalent tests, such as the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview and the ACTFL Writing proficient test, may be substituted. For tests of languages using a Roman alphabet, candidates are required to achieve an Advanced Low level of the oral skills and an Advanced Low level on the writing skills based on the ACTFL Proficiency Guidelines. For tests of languages using a non Roman alphabet, an Advanced Low Level on the oral skills and an Intermediate High level on the writing skills based on the ACTFL Proficiency Guidelines are required, or

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

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

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 Del.C. §1220(a))
14 DE Admin. Code 1558

REGULATORY IMPLEMENTING ORDER

1558 Standard Certificate Bilingual Teacher (Spanish) Primary and Middle

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal 14 DE Admin. Code 1558 Standard Certificate Bilingual Teacher (Spanish) Primary and Middle Level. As part of the review of Regulation 1537, it was decided to collapse the two levels of certification into one comprehensive K to 12 regulation. All involved parties concur with that recommendation.

Notice of the proposed repeal of the regulation was published in the *News Journal* and the *Delaware State News* on June 20, 2006 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to repeal the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby repealed shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1579 of the Administrative Code of Regulations of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7TH DAY OF SEPTEMBER, 2006

Harold Roberts, Chair	Edward Czerwinski
Sandra Falatek	Mary Furbush
Karen Gordon	Richard Gregg
Barbara Grogg	Leslie Holden
Lori Hudson	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Michael Thomas
Kathleen Thomas	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF SEPTEMBER, 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President
 Richard M. Farmer, Jr., Vice President
 Mary B. Graham, Esquire
 Gregory A. Hastings
 Barbara Rutt
 Dennis J. Savage
 Dr. Claibourne D. Smith

PROFESSIONAL STANDARDS BOARD

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

REGULATORY IMPLEMENTING ORDER

1570 Standard Certificate Early Childhood Teacher Special Education [, Birth to Grade 2]

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1570 Standard Certificate Early Childhood Special Education Teacher Birth to Grade 2. Regulation 1570 has been revised in collaboration with the Department of Education Early Childhood and Special Education staff and the Licensure and Certification Criteria Committee.

The regulation was published in the July 1 *Register of Regulations*. A public notice ad was placed in the

June 20 edition of the *Delaware State News* and the *News Journal* soliciting public comment. To date, no comment has been received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1570 of the Administrative Code of Regulations of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 7TH DAY OF SEPTEMBER, 2006

Harold Roberts, Chair	Edward Czerwinski
Sandra Falatek	Mary Furbush
Karen Gordon	Richard Gregg
Barbara Grogg	Leslie Holden
Lori Hudson	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling-Ross	Michael Thomas
Kathleen Thomas	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 21ST DAY OF SEPTEMBER, 2006

STATE BOARD OF EDUCATION

Jean W. Allen, President
Richard M. Farmer, Jr., Vice President
Mary B. Graham, Esquire
Gregory A. Hastings
Barbara Rutt
Dennis J. Savage
Dr. Claibourne D. Smith

* Please note that no changes were made to the regulation, except as noted in 3.0 below, as originally proposed and published in the August 2006 issue of the *Register* at page 211 (10 DE Reg. 211). Therefore, the final regulation, in its entirety, is not being republished. Please refer to the August 2006 issue of the

Register or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:
<http://www.doe.k12.de.us/>

3.0 Standard Certificate

The Department shall issue a Standard Certificate as a Early Childhood Teacher Special Education[, Birth to Grade 2] 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 Early Childhood Special Education; or

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

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

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

3.1.5.1 Atypical Infants and Toddlers;

3.1.5.2 Emergent Literacy in Reading and Writing;

3.1.5.3 Assessment of Young Children;

3.1.5.4 Differentiated Instruction for Young Children; and

3.1.5.5 Consultation or Working with Families; and

3.2 For applicants applying after December 31, 2005, where a PRAXIS™ II examination in the area of the Standard Certificate requested is applicable and available, achiev[ing-ed] 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 Me[eting-t] the requirements for licensure and holding a valid and current license or certificate from another state in Early Childhood Special Education;

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

3.4 Me[eting-t] the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 12 Delaware Code, Section 1154 (12 **Del.C.** §1154)

ORDER

Summary of the Evidence and Information Submitted

The Department published Proposed Regulations for Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs in the April 1, 2006 edition of the *Delaware Register of Regulations*. Publication in the *Delaware Register of Regulations* also signified the start of a 30-day public comment period that began on the same date and ended on May 1, 2006.

Comments

After the public outreach the Department did not receive any comments relating to the Regulations.

Findings of Fact

Based upon the fact that no comments were received no changes were made to the Regulations.

Order and Effective Date

NOW THEREFORE, it is ordered that the proposed regulations, as set forth in the attached copy, are adopted and shall be final effective ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of October 2006.

DEPARTMENT OF FINANCE

Richard Cordrey

Secretary of Finance

Approved this 10th day of October 2006

Audit Period for Voluntary Disclosure Agreements

The Division of Revenue proposes to adopt the following regulation concerning the Audit Period for Voluntary Disclosure Agreements Pursuant to 12 **Del.C.** §1154. Written comments or other written materials concerning the proposed regulation must be received by the Division of Revenue no later than 4:30 p.m., Wednesday, May 1, 2005, and should be addressed to Deputy Attorney General Jos. Patrick Hurley, Esquire, c/o Department of Finance, Division of Revenue, 820 North French Street, Wilmington, DE 19899-8911 or sent by fax to (302) 577-8656 or E-mail to pat.hurley@state.de.us.

Authority

This regulation is issued pursuant to the authority given to the State Escheator in Title 12 of the **Delaware Code** relating to Abandoned or Unclaimed Property.

Audit of Voluntary Disclosure Agreements

Present Policy:

Presently as articulated in the abandoned property regulations and forms a VDA is open for audit purposes for three years. The present regulations read as follows:

"The State of Delaware reserves the right for three years to audit a VDA. Interest and penalty may be

assessed pursuant to §1159 of the Abandoned or Unclaimed Property Law on all abandoned property due for all reporting years, if it is determined that the property reported on a VDA is materially under-reported. In such a case, the VDA shall be and of no force or effect. The State of Delaware reserves the right to fully audit the Holder in such a circumstance.”

And:

“The State of Delaware reserves the right to audit a VDA for three years from the date that a Holder has paid over property under a VDA.”

The Division of Revenue proposes to amend the above regulations and paragraph #8 of Form AP-DE-2 by shortening the audit period mentioned therein from three years to eighteen months. The above regulation and the AP-DE-2 form are to be amended by striking the words “three years” as the same appear in the above regulations and in the form and by inserting the words “eighteen months” in lieu thereof.

In connection therewith the following regulation will also be amended.

“The State of Delaware reserves the right to audit a VDA for three years from the date that a Holder has paid over property under a VDA.”

The amendment to this regulation will insert the words “has received a demand for payment from the abandoned property administrator and” between the words “holder” and “has” as the same appear in line three above. The purpose of this change is to be clear that the eighteen month audit period begins to run from the time the administrator has reviewed the holder’s VDA filing, agreed on a liability, issued a final demand for payment, and received the agreed upon payment; and not from the time a holder submits a VDA form and payment that has not been subjected to the abandoned property manager’s review. Merely submitting a form accompanied by a payment without more will not start the 18 month period running.

Effective Date:

This change shall be effective May 1, 2006 and it shall be applied retroactively to all VDA forms AP-DE-2 that were executed, accepted and where payment was made less than eighteen months ago. In other words for VDA forms AP-DE-2 that were executed more than eighteen months before May 1, 2006, and where the holder has not received a notice of intent to audit, the opportunity to audit will be closed. For VDA forms AP-DE-2 that were executed, accepted and where payment was made less than eighteen months ago and wherein the opportunity to audit was stated to be 3 years, the opportunity to audit will be reduce to eighteen months from the applicable date. Obviously, this proposed change is of no effect if before May 1, 2006, a holder that has previously filed a VDA receives a notice of intent to audit that is timely without regard to these proposed changes.

*** Please note that no changes were made to the regulation as originally proposed and published in the April 2006 issue of the *Register* at page 1502 (9 DE Reg. 1502). Therefore, the final regulation is not being republished. Please refer to the April 2006 issue of the *Register* or contact the Division of Revenue for more information.**

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)

ORDER

Long Term Care 20910.1 Institutionalized Spouse

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

NATURE OF THE EXEMPT REGULATION:

Citations

- 29 **Del.C.** §10113, *Adoption of Regulations; Exemptions*
- 1924(h) of the Social Security Act, *Definitions: Institutionalized Spouse*

Summary of Proposed Changes

The purpose of this amendment is to remove the examples to policy at DSSM 20910.1, *Institutionalized Spouse*. DMMA is not changing existing policies or procedures.

FINDINGS OF FACT:

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

THEREFORE, IT IS ORDERED, that the proposed revision regarding clarification changes to the policy at DSSM 20910.1 by removing the examples be adopted informally as an exempt regulation and shall become effective October 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 9/14/06

DMMA EXEMPT REGULATION #06-41

REVISIONS:

20910.1 Institutionalized Spouse

An individual who is in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility and who is not receiving HCBS.

~~Example 1~~

~~Mr. Smith is a resident of a Nursing Home. Mrs. Smith is living at home and is not receiving any Long Term Care Services. In this situation, a spousal calculation would be needed.~~

~~Example 2~~

~~Mr. Brown is in a Nursing Home. Mrs. Brown is in an Assisted Living Facility and is NOT on LTC Medicaid. In this situation, a spousal calculation would be needed.~~

~~Example 3~~

~~Mr. Jones is in a Nursing Home. Mrs. Jones is in an Assisted Living Facility and is receiving LTC Medicaid. In this situation, a spousal calculation would not be needed. Mr. and Mrs. Jones should be looked at as two separate~~

individuals—

Example 4

~~Mr. Jackson is in a Nursing Home. Mrs. Jackson is at home receiving Home and Community Based Services on LTC Medicaid. In this situation, a spousal calculation would not be needed.~~

9 DE Reg. 1187 (02/01/06)

9 DE Reg. 1565 (04/01/06)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

DSSM 20950 Initial Eligibility Determinations and 20970 Fair Hearings

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding Section 6013 of the Deficit Reduction Act (DRA) of 2005 requiring all states follow the "Income First" rule. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the August 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 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 CHANGE

Statutory Authority

Section 1924 of the Social Security Act (42 U.S.C. 1396r-5(d)), as amended by the Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

Background

When one spouse enters a long-term care facility and the other remains in the community, the Division of Medicaid and Medical Assistance (DMMA) makes an attribution of the couple's financial resources to allocate the amount of resources to be protected for the community spouse. If the couple believes that the amount of protected resources will not generate enough income for the community spouse, the couple can appeal the attribution decision. The amendment to the Division of Social Services Manual (DSSM) codifies the way income is considered for the appeal decision on whether to protect a higher amount of resources.

The Deficit Reduction Act (DRA) of 2005, Section 6013 amends the Federal Medicaid statute to require the application of "Income First" rule in applying community spouse's income before assets in providing support of the community spouse.

Section 6013 mandates that the State must consider all income of the institutionalized spouse that can be allocated to the community spouse, in order to bring the community spouse's income up to the minimum monthly maintenance needs allowance (MMMNA), before raising the community spouse's resource allowance to adequately provide for that income.

This mandate of the income first rule applies to transfers and allocations made on or after the date of enactment by individuals who become institutionalized spouses on or after such date.

Summary of Proposed Change

The Minimum Monthly Maintenance Needs Allowance (MMMNA) is the amount of money necessary to

raise the community spouse's income to the level of his/her monthly needs, and shall be obtained from the monthly income of the institutionalized spouse. In cases where the client became an institutionalized spouse on or after February 8, 2006, the community spouse resource allowance must use all of the client's available income and the community spouse's income to meet the community spouse's MMMNA before any resources are used to generate interest income to meet the allowance.

Prior to enactment of the Deficit Reduction Act of 2005, using the income first methodology was optional. Under the new federal law, using income first is mandatory in all situations. Although the Department's calculation for the needs of the spouse of the client uses income first, States were not required to use the income first methodology. The new rules at DSSM 20950.1 and 20970.1 include language which requires DMMA to use an income first approach before allocating additional resources to the community spouse. All available income of the institutionalized spouse must be considered before allocating additional resources to the community spouse.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

No public comments were received.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2006 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the *Division of Social Services Manual* regarding Section 6013 of the Deficit Reduction Act (DRA) of 2005 requiring all states follow the "Income First" rule is adopted and shall be final effective October 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 9/14/06

* **Please note that no changes were made to the regulation as originally proposed and published in the August 2006 issue of the *Register* at page 283 (10 DE Reg. 283). Therefore, the final regulation is not being republished. Please refer to the August 2006 issue of the *Register* or contact the Division of Medicaid and Medical Assistance for more information.**

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Title XIX and DSSM 20620 and 20995

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSED CHANGES

Statutory Authority

- Social Security Act §1917(c), *Liens, Adjustments and Recoveries and Transfers of Assets*
- 42 CFR §435.700 et seq., *Specific Post-Eligibility Financial Requirements for the Categorically Needy*
- 42 CFR §435.832, *Post-eligibility Treatment of Income of Institutionalized Individuals: Application of Patient Income to the Cost of Care*

Background

On April 18, 2006, CMS issued Regional Memo 06-04. This memorandum addresses the treatment of medical and remedial care expenses incurred as a result of the imposition of a penalty for transferring assets for less than fair market value under the Medicaid post-eligibility treatment of income.

Under section 1917(c) of the Social Security, certain individuals who dispose of assets for less than fair market value are subject to imposition of penalty. The statute provides that during the penalty period such individuals are ineligible for Medicaid payment for nursing facility services, and for comparable long-term care services provided in institutions other than nursing homes, in an individual's home, or in a community setting. The length of the period of ineligibility (known as the penalty period) is directly related to the uncompensated value of assets that were transferred.

Because Medicaid is not paying for a person's nursing home care during a penalty period, an individual subject to a transfer of assets penalty is responsible for paying for that care him or herself. At the end of the transfer of assets penalty period, such an individual may have incurred nursing facility and other penalized expenses that remain unpaid.

Once the penalty period expires, the individual can become eligible for Medicaid payment for nursing home or similar care, at which point the individual also becomes subject to the post-eligibility treatment of income process as set forth in regulations at 42 CFR §435.700 et seq. and 42 CFR §435.832.

Summary of Proposal

In compliance with recent clarification of federal regulations, DMMA will amend the provisions governing incurred medical expenses that may be considered allowable deductions in the determination of patient liability. DMMA amended policies will clarify that the State will not allow any expenses incurred during a penalty period to be used in the post-eligibility period for the purposes of long-term care services.

The following provisions contained in DSSM and the Title XIX Medicaid State Plan will be amended: DSSM 20620.2.2, 20620.2.3, 20995.1 and State Plan Supplement 3 to Attachment 2.6-A.

The proposed amendment is subject to approval by the Centers for Medicare and Medicaid Services (CMS).

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

SCPD opposes the proposed regulations based on the following observations.

First, the regional memo from an "associate regional administrator" does not have the force and effect of law. Moreover, as reflected in the memo (at page 2), it conflicts with prior official CMS interpretations which concluded that "the loophole could not be closed without changing the post-eligibility regulations". The regional memo is not as authoritative as the previous inconsistent national CMS guidance. If CMS wishes to modify its view of long-standing statute, it should do so by regulation, not by a regional memo to a handful of states.

Agency Response: DMMA recognizes the CMS letter as guidance. CMS provides guidance and clarification on current information pertaining to Medicaid policy to ensure consistency and better serve States. States are required to follow guidance from CMS.

Second, the CMS interpretation is contrary to the plain meaning of the statute. If Congress authorized "reasonable limits", it obviously envisioned some upper caps on amounts, or some flexibility in determining the

amount of allowable deductions. Congress did not authorize total exclusion of all necessary expenses. Indeed, since Congress addressed the transfer of assets penalty in the Deficit Reduction Act of 2005, it would logically have changed the "deduction" statute if it were dissatisfied with the existing interpretation of that statute. The failure of Congress to amend that statute represents acquiescence in its traditional interpretation.

Agency Response: DMMA believes that a reasonable limit could be zero and states are being given flexibility to use a range beginning at zero. The guidance is in the spirit of the Deficit Reduction Act of 2005, a federal law.

Third, if DMMA chooses to follow the sub-regulatory regional memo, and it is subsequently repudiated by the courts or other authority, Delaware will be faced with "underpayment" claims by providers and reimbursement claims by beneficiaries. The State assumes a risk in following a sub-regulatory opinion contrary to statute and long-term national CMS guidance. If DMMA wishes to adopt some restrictions, it could consider a more "defensible" standard than "zero". For example, it could consider a percentage approach (e.g. 25% reduction in otherwise allowable deduction for medical and remedial care expenses incurred as a result of imposition of transfer of assets penalty period). Alternatively, it could adopt a phased-in approach (e.g. 25% reduction for first 12 months of post-transfer of assets penalty period followed by 50% reduction for balance of post-transfer of assets penalty period). This would be less burdensome on beneficiaries with bills that could be paid within several months.

Agency Response: Currently, DMMA does not allow protections for expenses incurred during an ineligible period. Therefore, there is no change in office practice. In addition, your suggestion of using a percentage defeats the point of having a penalty period. If an applicant can transfer his assets rather than pay for his long term care, and still have Medicaid pay his medical bills, then there would be no point to having a penalty period.

Fourth, as the CMS memo indicates, the deduction is designed to allow the beneficiary to pay legitimate outstanding medical bills. If no deduction is allowed, the beneficiary may be beset by medical creditors and collection agencies. Predictably, those unpaid creditors will pursue legal action to execute on the beneficiary's assets, including any auto or home in which the non-institutionalized spouse resides. The effect of the state regulation will be to undermine the non-institutionalized spouse protections central to the federal Medicaid system. Moreover, since Delaware law permits long-term care facilities to discharge residents with unpaid bills (Title 16 Del.C. §1121(18)), the application of this regulation may result in evictions from nursing homes.

Agency Response: DMMA will continue to offer protections for legitimate expenses which were not incurred during a penalty period. However, if the applicant/recipient had not transferred their assets, then they would not have bills for which they are "beset by medical creditors and collection agencies".

No change to the proposed amendment will be made because of these comments.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the July 2006 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) regarding the provisions governing incurred medical expenses that may be considered allowable deductions in the determination of patient liability is adopted and shall be final effective October 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 9/14/06

* 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 52 (10 DE Reg. 52). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register* or contact the Division of Medicaid and Medical Assistance for more information.

FINAL REGULATIONS

DIVISION OF SOCIAL SERVICES

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

ORDER

Temporary Assistance for Needy Families (TANF) Employment and Training Program

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Temporary Assistance for Needy Families (TANF) Employment and Training Program. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the August 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 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 CHANGE

Citations

- Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006
- 45 CFR Part 261, *Ensuring That Recipients Work*
- 45 CFR Part 262, *Accountability Provisions - General*
- 45 CFR Part 263, *Expenditures of State and Federal TANF Funds*
- 45 CFR Part 265, *Data Collection and Reporting Requirements*

Summary of Provisions with Cost/Budgetary Impact

TANF Program

1) Division of Social Services Manual (DSSM) 3001, 3006.2, 3006.2.1, 3006.3, 3006.4, 3008.1.4, 3009, 3010.2, 3011

The purpose of these changes to existing policy is due to the new interim final regulations that mandate states to meet stricter participation requirements.

These changes encourage Employment and Training participation.

TANF Program

2) Division of Social Services Manual (DSSM) 3009.1, 3009.2, 3009.3, 3009.2, 3009.3, 3011.1, 3011.2, 3011.3, 3012, 3012.1, 3012.2, 3031, 3031.2 and 3031.4

The purpose of these changes to existing policy is due to the new interim final regulations that mandate states meet stricter participation requirements. Changes were also made to simplify the sanctioning process.

The changes to the Employment and Training sanction policy for not meeting the required participation hours eliminates the progressive 1/3, 2/3, and permanent sanction. The families are no longer permanently sanctioned off TANF. It is replaced with a full family TANF sanction that closes the TANF case once the individual does not meet the required hours of participation. Families may receive TANF benefits again as long as they complete a required consecutive 4 weeks of full participation.

The teen sanction changed so that a teen under the age of 16 not attending school will have the TANF grant sanctioned \$50.00 each month until either the child returns to school, the mother works with the appropriate agencies, or the TANF grant is reduced to zero. If the mother works with the appropriate agencies and the child still does not return to school the benefit will be restored.

The sanction for teens over 16 and not attending school is the removal of the teen from the

assistance group and the reduction of the household size. If the teen returns to school or participates with Employment and Training for the required hours they can be added back to the assistance case.

TANF Program

3) Division of Social Services Manual (DSSM) 3006.1, 3006.2, 3006.3, 3009.1, 3011, 3011.3, 3031, 3031.1, and 3031.2.

Additional changes were made to existing policies due to compliance with the Deficit Reduction Act of 2005 (DRA), interim final rules.

The DRA requires that the States implement this legislation by October 1, 2006. For this reason new language has been added to the regulation text as well as grammatical changes, where necessary.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Disabilities Law Program (DLP), Community Legal Aid Society, Inc. and the State Council for Physical Disabilities (SCPD), the Poverty Law Program of the Community Legal Aid Society, Inc. and the Delaware Developmental Disabilities Council (DDDC), offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

DLP

The DLP recognizes that certain changes in Delaware's TANF Employment and Training program are mandated by changes in the federal welfare reform law. The DLP supports the comments submitted by Community Legal Aide Society, Inc.'s poverty program and offers the following comments to highlight areas in which the Department's proposed amendments may adversely impact people with disabilities.

1. **Voluntary Employment and Training Program Participation with Reasonable Accommodations for People with Disabilities**

Section 3006.2.1 of the proposed amendment lists the groups who "must participate in work related activities." Section 3006.3 states that "individuals deemed unable to work because they are physically or mentally disabled" will be referred to the Division of Vocational Rehabilitation. While the DLP supports the continued exemption for people who are unable to meet the employment and training program requirements as a result of a disability, the DLP also recognizes that there are people with disabilities who wish to participate in the Department's employment and training program. As a result of their disabilities, however, these recipients may be unable to comply with all of the employment and training program rules without reasonable accommodations. For example, a person with a disability may be unable to work the mandated 30 hours per week for single parent families. A person caring for a family member with a disability may face similar limitations.

The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act require the Department to provide reasonable accommodations to people with disabilities in these and similar circumstances. The U.S. Department of Health and Social Services Office for Civil Rights (OCR) has issued guidance for state TANF programs in this area.

The DLP recommends that the Department adopt additional language to clarify that while people with disabilities may be unable to engage in activities necessary for work and thus are deemed "unemployable," these recipients have the option of voluntarily participating in the Employment and Training program with reasonable accommodations. Any of the Employment and Training program rules may be modified where necessary as a reasonable accommodation for a physical or mental disability.

Agency Response: DSS currently allows all TANF recipients to volunteer for the Employment and Training program including individuals with disabilities who may otherwise be exempt. DSS agrees with adding the additional language regarding the availability of reasonable accommodations throughout the applicant and recipient process. See section 3006.1.

2. **Assessment and Identification of People with Disabilities, Including Undiagnosed or "Hidden" Disabilities**

The proposed amendments refer to the identification of barriers to employment, including,

presumably, disabilities. For example, §3009 states in part that "[u]nder TANF, the client and worker must become partners in efforts to surmount any and all obstacles to success. While it is expected that the client verbalize any difficulties s/he may have or expect to have in meeting TANF requirements, the worker also has a duty to do whatever s/he can elicit from the client any information needed to identify and overcome hurdles." Section 3010.2.1 defines the Family Development Profile as "an assessment tool used to identify possible social, family, and emotional barriers to self-sufficiency as they affect an individual's ability to obtain and retain employment" and provides that it is a "mandatory assessment tool for all adult and teen TANF recipients."

Without additional information, the DLP cannot comment specifically on the Department's current practices and assessment tools in this area. The DLP recommends that the Department train its workers and utilize assessment tools that appropriately identify disability-related barriers to employment, recognizing the prevalence of disabilities among TANF recipients, including many disabilities that are not readily apparent. For example, studies indicate that one-fourth to one-third of TANF recipients have a serious mental health problem; more than one-fifth have physical impairments; more than one-fifth have learning disabilities; and, more than one-fifth have low intelligence. See Eileen P. Sweeney, "HHS Guidance Explains How Federal Laws Barring Discrimination Against People with Disabilities Apply in State and County TANF Programs," Center on Budget and Policy Priorities, Feb. 26, 2001; Eileen P. Sweeney, "Recent Studies Indicate that Many Parents Who Are Current or Former Welfare Recipients Have Disabilities or Other Medical Conditions," Center on Budget and Policy Priorities, Feb. 29, 2000.

Failure to comply with TANF requirements results in serious penalties. See §§3011.2, 3011 and 3031.

DLP recommends that the Department adopt language clarifying that while efforts to identify disability-related barriers to employment should be on-going, these issues should be assessed as early as possible in the case. For example, it is preferable to examine whether an adult is "unemployable" prior to imposing sanctions, rather than taking steps to remove the sanction after the fact.

An appropriate effective assessment of disability-related barriers to employment becomes all the more important given the Department's proposal to require two weeks of employment and training participation prior to the authorization of benefits. The DLP recommends that the Department adopt language recognizing the existence of disability-related barriers prior to referring applicants to employment and training activities. The Department should include language to clarify that applicants who meet the definition of "unemployable" on the basis of a physical or mental disability will be exempt from the two week participation requirement. The Department also should reiterate that it will provide reasonable accommodations where necessary to facilitate the participation of people with disabilities.

Agency Response: DSS agrees that efforts to identify disability related barriers to employment should be an on-going process, and assessed as early as possible. DSS requires an assessment prior to the referral to the Employment and Training contractor. The new Employment and Training contracts will require that the Employment and Training contractors assess all individuals to identify barriers to employment. In addition, DSS is in the planning process to develop a medical review process to identify, and evaluate individuals with disabilities to ensure appropriate service delivery.

3. Satisfactory School Attendance Should Account for Absences of Children with Disabilities for Disability-Related Reasons

Section 3012 provides for sanctions for "unsatisfactory school attendance." If the child's school does not define "acceptable" attendance, the Department will consider an 85% attendance rate as satisfactory.

Children who are enrolled in school full-time may not necessarily attend school full-time for reasons beyond their control. For example, a child with a disability may miss a significant number of days due to health problems or medical appointments. That child's parent consequently may be unavailable to participate in the required number of work hours per week because the parent needs to attend to the child's disability-related needs.

The DLP recommends that the Department clarify that sanctions for unsatisfactory school attendance will not be imposed if the child misses school for reasons related to disability.

Agency Response: DSS agrees that unsatisfactory school attendance that may result from disability related issues should be evaluated. Current policy allows for good cause determinations prior to implementing a

sanction. Unsatisfactory school attendance due to verifiable disability related issues would be considered good cause.

SCPD, DDDC

As background, the impetus for the amendments is the Deficit Reduction Act (DRA) of 2005. The Act prompted issuance of a 30-page set of federal HHS interim final rules which were effective June 29, 2006. See 71 Fed. Reg. 37453 (June 29, 2006). Consistent with the attached articles, the federal regulations are designed to impose stricter requirements on the Temporary Assistance for Needy Families (TANF) Program.

First, Section 3001, Pars. M and N contain some outdated language that could be improved. For example, "able-bodied parents" suggests that the standard applies only to persons with physical as juxtaposed to mental impairments. This is misleading. See also reference to "able-bodied children" in Section 3006. Contrast Section 3006.3 reference to "physically or mentally disabled". Similarly, the term "incapacitated" is ostensibly a stricter standard than the term "disabled work-eligible individual" in the new federal regulation, 45 C.F.R. §261.24(a)(2).

Agency Response: DSS appreciates the comment regarding work-eligible individuals and will be adding this to the list of definitions in section 3001. Additionally, the word "Able-Bodied" is deleted in section 3006.1.

Second, there is a typo in the example at the top of p. 290. The reference should be "meet a 50% work participation rate" rather than "meet at 50% participation rate".

Agency Response: DSS agrees. The reference is changed to a.

Third, Section 3006.2 contains the following exemption: "Single custodial parents with a child under 12 months of age are able to receive an exemption from Employment and Training requirements for a total of 12 months of their lifetime." The federal regulation authorizes states to adopt this exemption as an option. See 45 C.F.R. §261.22(c). DSS may wish to consider omitting the "lifetime" restriction.

Fourth, Section 3006.4, sixth bullet, limits job search and job search readiness activities to six (6) weeks. Consider with the attached excerpt from Center on Budget and Policy Priorities (CBPP), Analysis of New Interim Final TANF Rules, at 7, Delaware is one of 30 states which meet HHS criteria for adopting a twelve (12) week standard. DSS may wish to consider this option.

Fifth, Section 3006.4 refers to credit for "study time" based on "the Blevins bill". The new federal regulations ostensibly limit counting "study time" to supervised or monitored study hours. See attached CBPP analysis at pp. 12-15, 18. DSS may wish to consider whether this new requirement should be reflected in Section 3006.4.

Sixth, Section 3009 contains sanction standards. The philosophy here is somewhat harsh, i.e., the sequence of penalties is applied to maximize the cumulative effects of sanctions. For example, Section 3009.3 recites as follows:

The order in which sanctions are imposed is important because we cannot sanction a closed case. If a client has both an enhanced family function and a self-sufficiency sanction for the same period it is important to make sure the enhanced family sanction that reduces the TANF grant is imposed prior to the self-sufficiency sanction that closes the case.

To the extent DSS enjoys some discretion in this context; it may wish to consider a less rigid approach to imposing cumulative sanctions which maximize the overall penalty on the family.

Seventh, Section 3011.1 deletes a reference to good cause for termination of employment. Literally, this creates some tension with Section 3011 which contemplates good cause for termination of employment. Literally, Section 3011.1 would not allow termination of employment even if an employee is severely injured on the job, subjected to sexual harassment, or at risk of death or health impairment due to conditions (e.g. asbestos; heat) and irrespective of medical opinion.

Eighth, Section 3011.3 refers to failure to maintain work activities as an "offense". This term connotes a violation of criminal law. It would be preferable to refer to a "sanctionable event".

Ninth, Section 3012 does not differentiate between excused and unexcused absences from school. Children with disabilities may be absent for many days due to surgeries or conditions (e.g., sickle cell anemia). The focus should be on unexcused absences rather than a simple 85% attendance figure which does not

differentiate between excused and unexcused absences.

Agency Response: DSS appreciates the comments regarding sections 3006, 3006.3, 3006.2, 3006.4, 3009, 3009.3, 3011.1, 3011.3 and 3012 and will take them under consideration.

Poverty Law Program

In addition to the points below, the Poverty Law Program supports the comments already submitted by the Disabilities Law Program of the Community Legal Aid Society, Inc.

1. §3001
Good Cause

The definition of "good cause" for quitting should not be eliminated. In addition to the examples of "on the job discrimination" and "health and/or safety risk" which should be retained, other examples should be added, such as "lack of adequate day care" and "lack of transportation." These are the most frequent reasons we hear that clients had to leave jobs. Another example that should be added would be "domestic violence" which could affect the ability to keep a job either because the abuser will not allow the victim to work or because the victim is not safe at a job where the abuser knows where to find her. This definition should state specifically that "good cause" applies to all Delaware TANF requirements.

Sanction

This definition uses the phrase "quits a job without good reason." The word "reason" should be changed to "cause" so that it matches the term that is defined.

Agency Response: DSS appreciates the comments in section 3001. The definitions for "Good Cause" and "Sanction" have been revised.

2. §3006

While no changes are proposed to this section, we would suggest adding on to the second sentence so that it reads "The Division maintains that the way for persons to avoid TANF dependency is for them to find and maintain employment and to develop marketable job skills through education and training."

3. §3006.2

We commend the Division for defining the teen parent participation requirement as including "[e]lementary, secondary, post-secondary, vocational, training school, and participation in GED program." Our comment here is grammatical. There should be a period after the word "work" and before the word "If."

Agency Response: DSS appreciates the support. Grammar is corrected.

The Division should consider an additional paragraph to specify that Delaware's Temporary for Needy Families (TANF) Program will comply with the Americans with Disabilities Act and Section 504 of the Rehabilitation Services Act. This paragraph should state that persons who have disabilities who are working or participating in work related activities for a minimum number of hours that they are able to do will be counted as fully participating even if the number of hours completed is less than what would be required for a similarly situated non-disabled person, as a reasonable accommodation under the above mentioned federal laws.

4. §3006.3

We reference and will not repeat the comments made by our DLP regarding services and procedures for persons with disabilities. We fully support the comments made by our DLP.

A second sentence should be added to the second paragraph that states that "the Division will require TANF contractors to offer referrals for employment and training activities offered by the state and private entities.

5. §3006.4

The terms "nursing or nursing assistant activities" should be defined. We think you are describing

a person who is not a nurse but is caring for someone with a disability, which we commend. However, the terms should be defined here or in §3001 to be clear.

Agency Response: DSS appreciates the comments regarding sections 3001, 3006, 3006.2, 3006.3, 3006.4 and will take them under consideration.

6. §3009

We are concerned with the sixth paragraph of this section which discusses the need for workers to respond quickly with clients who have a clear understanding yet fail to meet obligations. There is no comparable statement to address what happens when clients do not have a clear understanding of the program and thus fail to meet obligations. The Division needs to recognize that some of the people in the TANF program will have cognitive impairments that will negatively affect the ability to comply with the complex TANF rules.

Agency Response: DSS appreciates the comments regarding section 3009 and recognizes that individuals with disabilities may have difficulties understanding and meeting the requirements. To identify as many individuals with disabilities as possible DSS requires an assessment prior to the referral to the Employment and Training contractor. The new Employment and Training contracts will require that the Employment and Training contractors assess all individuals to identify barriers to employment. In addition, DSS is in the planning process to develop a medical review process to identify, and evaluate individuals with disabilities to ensure appropriate service delivery.

7. §3009.1 (3)

We applaud the Division for considering the school attendance requirement cured if the parent is otherwise compliant and working with the school to improve attendance, even if the child does not return to school. This recognizes the reality of parent and controlling a teenager.

Agency Response: DSS appreciates the support.

We similarly applaud the Division for allowing a teen to return to the TANF case after school attendance is improved.

Agency Response: DSS appreciates the support.

We note that in subparagraph (2) the Division twice uses the term "mother" to refer to a parent. The Division should probably substitute the word "parent" as is used earlier in this section or even substitute "adult in assistance unit" for both "mother" and "parent" in this section, since not every assistance unit is headed by a mother or even a parent.

Agency Response: For section 3009.1, subparagraph (2) and changes "mother" to "caretaker" as used earlier in this section.

8. §3011.1

This section would be more consistent and clear if the last word of the first sentence was "hours" instead of "amounts." This is what we believe is intended. If "hours" is not what is intended, the sentence should be rewritten to be more clear.

The Division should not remove the indicated phrase from the second sentence. The regulations need to be clear that some TANF participants will have "good cause" for termination a job, as defined under section 3001. The failure of the Division to allow for "good cause" reasons for failing to keep a job could open the State to legal challenges for failing to provide due process and failing to accommodate person with disabilities.

Agency Response: DSS appreciates the comments regarding section 3031 and will take them under consideration.

9. §3011.2

We applaud the elimination of the "3 strikes and you're out" sanction system.

Agency Response: DSS appreciates the support.

10. §3011.3

The Division should state that noncash assistance will be provided during the four consecutive weeks of compliance during the cure period. Such noncash assistance should include child care assistance, transportation assistance, and emergency assistance in the form of vendor payments for rent and utilities. Many TANF participants will not be able to participate for four weeks without child care and transportation assistance. Emergency assistance should also be available to participants actively curing the sanction so that families are not further destabilized, such as homelessness, as they return to a road to self-sufficiency.

The Division should also provide a retroactive cash benefit for the four weeks of compliance. This will help the family get on their feet and avoid violations of the Fair Labor Standards Act if the compliance required participation in the Work for your Welfare program.

Finally, the Division should allow families subject to the lifetime sanction under the prior policy to cure the sanction under the new regulations. Our office have begun to see people who allowed their cases to close subject to the lifetime ban because they did not fully understand it and/or because they had found employment or family to help them at that time. A lifetime ban is unduly harsh, considering the nature of the TANF program and the minimal cash assistance it provides. Even criminals who commit far worse crimes than noncompliance with TANF program requirements are given another chance once they serve their prison terms. Four weeks of compliance should satisfy the Division that a participant is serious about complying with program rules this time.

Agency Response: DSS intends to provide non-cash assistance during the required two week of pre-participation as well as during the 4 week sanctioning process. DSS intends to give retroactive payment for the completion of the two-week pre-participation. DSS does not plan on giving retroactive payments if an individual complies with the 4-week sanction. This would not be in violation of the Fair Labor Standards act since the individual receives the TANF assistance from the first of the month. The sanction will be applied when an individual has not completed the requirements in a month that they have already received a TANF check.

11. §3031

The Division should specifically state that noncash assistance will be provided during the initial two week period after a family applies for TANF assistance. Such noncash assistance should include child care assistance and transportation assistance. Many TANF applicants will not be able to participate for two weeks without child care and transportation assistance. The Division should also provide a two week retroactive cash benefit once the case is opened.

The phrase "approved employment related activities" is not defined throughout this section. A definition or list of approved activities would be helpful.

Work for your Welfare hours should be based upon the Delaware State minimum wage, not the federal, as cited in the third paragraph.

The provisions of §§3031.1 and 3031.2 that close TANF cases when work for your welfare hours are not completed would appear to violate the Fair Labor Standards Act (FLSA). FLSA is the reason that the number of hours is determined by dividing the cash and food stamp grants by the state minimum wage. The Division recognizes that FLSA is violated if the hours a family must work for their cash and food stamp grants exceeded what that family would be paid under the minimum wage for the same hours of work. If a family works partial hours under the work for your welfare program but has their case closed as a sanction, FLSA would similarly be violated because the family would be paid nothing for hours they worked. This regulation should be changed.

12. §3031.2

This section is also troubling because it closes the case of a two-parent household if just one parent fails to comply. In addition to the FLSA violation described above, this provision fails to recognize that the compliant parent may not have control over the noncompliant parent, particularly in the instance of domestic violence.

13. §3031.4

Again, the Division should specifically state that noncash assistance will be provided during the initial two week period after a family applies for TANF assistance. Such noncash assistance should include child care assistance and transportation assistance. Many TANF applicants will not be able to participate for two weeks without child care assistance and transportation assistance. The Division should also provide a two week retroactive cash benefit once the case is opened.

Agency Response: DSS appreciates the comments regarding section 3031 and will take them under consideration.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2006 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Temporary Assistance for Needy Families (TANF) Employment and Training Program is adopted and shall be final effective October 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 9/14/06

DSS FINAL REGULATIONS #06-44

REVISIONS:

3000 Temporary Assistance for Needy Families (TANF) - Definition

(Break in Continuity of Sections)

3001 Definitions

The following words and terms, when used in the context of these policies, will, unless clearly indicated otherwise, have the following meanings:

- A. Benefits (Non-Time-Limited) - the receipt of TANF benefits that are not subject to a time limitation.
Benefits (Time-Limited) - the receipt of TANF benefits for a limited period of time.
- B. Caretaker (Needy) - a parent or non-parent included in the grant who is caring for a needy child. Needy caretakers are required to comply with the CONTRACT OF MUTUAL RESPONSIBILITY to receive benefits. Needy caretakers are subject to the time limit requirements.
Caretaker (Non-Needy) - a non-parent, not included in the grant, who is caring for a needy child. Non-needy caretakers are required to comply with the CONTRACT OF MUTUAL RESPONSIBILITY to receive benefits. Non-needy caretakers are not subject to the time limit requirements. These caretakers will receive benefits under the Children's Program.
- C. Children's program - the name of the agency's program for persons who receive non-time-limited benefits. Persons in this program are not subject to the usual time limits for the receipt of benefits. However, persons in this program must comply with a non-work-related CONTRACT OF MUTUAL RESPONSIBILITY, e.g., participation in parenting classes, school attendance for the child or immunizations as necessary.
- D. Contract of Mutual Responsibility – an agreement between the TANF client and the agency which sets obligations and expectations between the TANF client and agency in exchange for benefits.
- E. Cumulative Months - the total number of months, not necessarily consecutive months, which make up a particular time period.
- F. Delaware's Temporary Assistance for Needy Families (TANF) Program - the title of Delaware's new welfare reform program.
- G. Employable - the ability to engage in activities necessary to acquire and retain a job, at a wage level at least equal to the minimum wage; an employable person is physically and mentally able to participate in employment or activities necessary to seek and obtain employment, e.g. job search, job training, job readiness, etc. While an individual is employable the receipt of benefits is time-limited.
- H. Employment (Subsidized) - a public or private sector job for which the employer receives a grant

or allotment to pay all or a portion of the employee's wage.

Employment (Unsubsidized) - a public or private sector job for which the employer receives no grant or allotment to pay either all or a portion of the employee's wage.

I. Good Cause - An adult recipient may have legitimate reasons for not cooperating either in the development of the Contract of Mutual Responsibility or the requirements as set forth in the Contract. The adult recipient has "good cause" when either a circumstance or condition exists in either her/his personal or family situation beyond which she/he has no control, and which would prevent cooperation and/or participation.

Good cause for quitting a job would include but not necessarily be limited to:

- On the job discrimination;
- Health and/or safety risk;
- **[Domestic violence.]**

~~J. H.B. 251 (1995) - House Bill 251 established the Delaware Welfare Employment Program. This is a program where the agency places TANF clients in jobs with local employers while subsidizing the client's salary up to the State's minimum wage for a maximum of six months.~~

~~K.J.~~ Pay After Performance - A work experience and/or Employment and Training program required for families with employable adults where the adult has not found employment or has lost a job. Families who were continuously on TANF prior to 01/01/2000 will have 24 months before being required to enter into this program. Families reapplying on or after 01/01/2000 will immediately enter this program. Participants will work to earn TANF benefits.

~~L.K.~~ Sanction - a financial penalty for TANF client's failure or refusal without good cause to meet her/his work Employment and Training participation requirements. If the client refuses or fails to meet work related requirements (job search, training, etc.) or quits a job without good **[reason cause]**, ~~for the 1st offense the penalty is 1/3 reduction of the grant; the second offense is a 2/3 reduction; and the 3rd is permanent loss of the entire grant the client's TANF case will be closed.~~ If the TANF client refuses or fails to attend a Contract of Mutual Responsibility requirement (e.g., participate in parenting education) the penalty is a \$50.00 reduction in the grant for each month the client refuses or fails to participate.

~~M.L.~~ Suitable Employment - employment that provides income at least equal to the payment standard after deduction of work expenses, the TANF work deduction and child care as paid, and provides wages at least equal to the minimum wage. Individuals will be expected to work at jobs that are below their skill levels, if such positions provide the only available employment.

~~N.M.~~ Two Parent Program - able-bodied parents and their children who meet the standard of need and all TANF eligibility requirements, except deprivation, will be eligible for cash benefits. Eligibility for this program is based on need; there is no deprivation requirement. Cash benefits are time limited and both parents must comply with a Contract of Mutual Responsibility.

When one parent in an intact family is incapacitated, the family should not be placed in the two-parent program.

~~O.N.~~ Unemployable - the inability to engage in activities necessary to work for at least the minimum wage; the person is prohibited because s/he is physically or mentally disabled. An unemployable individual cannot participate in employment or activities necessary to seek and obtain employment, e.g., job search, job training, job readiness, etc.

The determination and duration of unemployability are made by a health care professional (e.g., doctor, nurse, nurse practitioner, therapist, etc.). Periods of unemployability are not counted toward the cumulative months of benefit eligibility under the time-limited program.

O. Week - A week is defined as seven consecutive days, Monday through Sunday.

[P. Work-eligible individual - an adult (or minor child head-of-household) receiving assistance under TANF or a separate State program or a non-recipient parent living with a child receiving assistance (child-only cases). See exclusions below.

Q. Excluded work-eligible individuals - Child-only cases that are:

- A minor parent and not the head-of-household or spouse of the head-of-household;
- An alien who is ineligible to receive assistance due to the immigration status; or
- At state option, on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits

Other work-eligible exclusions: A parent providing care for a disabled family member living in the home, who does not attend school on a full-time basis, provided that the need for such care is

supported by medical documentation.]
 9 DE Reg. 1370 (03/01/06)

(Break in Continuity of Sections)

3006 TANF Employment and Training Program

Delaware's Temporary Assistance To Needy Families welfare reform effort is based on the idea that TANF is a transitional benefit and should not become a way of life. The Division maintains that the way for persons to avoid TANF dependency is for them to find and maintain employment.

3006.1 Mandatory Participants

All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. The two exemptions are: 1) a parent caring for a child under **[13 weeks 12 months]** of age or 2) an individual determined unemployable by a health care professional.

~~[Able-bodied - C]~~ children age 16 or older who are not attending school must participate in work or other alternative activities, e.g., GED.

[Individuals who are exempt from Employment and Training requirements can volunteer to participate in the Employment and Training Program. Individuals with disabilities will be afforded the same access and opportunities including reasonable accommodations to participate in the Employment and Training programs.]

3006.2 TANF Employment and Training Participation and Participation Rates

Under the Temporary Assistance For Needy Families Block Grant, DSS is required to meet the following work participation rates with respect to all families that include an adult or minor child head of household receiving assistance:

ALL FAMILIES		TWO-PARENT FAMILIES	
Fiscal Year	Minimum Participation Rate	Fiscal Year	Minimum Participation Rate
1997	25	1997	75
1998	30	1998	75
1999	35	1999 and after	90
2000	40	-	-
2001	45	-	-
2002 and after	50	-	-

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ALL FAMILIES (SINGLE PARENTS AND TEEN PARENTS)

<u>Fiscal Year</u>	<u>Minimum Participation Rate</u>	<u>Required weekly hours of participation</u>
<u>2002 and after</u>	<u>50%</u>	<u>30 hrs</u>

TWO PARENT FAMILIES

<u>Fiscal Year</u>	<u>Minimum Participation Rate</u>	<u>Required weekly hours of participation</u>
<u>1999 and after</u>	<u>90%</u>	<u>35 hr a weeks</u>
		<u>55 hrs a week if receiving [Federal] Child Care Subsidy.</u>

DSS may face a lower work participation rate if it experiences a net caseload reduction compared to FY ~~1995~~ 2005.

Example: If it is determined that DSS' average monthly caseload in FY ~~1997~~ 2006 was 4 percentage points lower than average monthly caseloads in FY ~~1996~~ 2005, then, rather than having to meet a ~~30%~~ 50% work participation rate requirement in FY ~~1998~~ 2006, the rate would be lowered by 4 percentage points to ~~26%~~ 46%.

To be counted toward meeting the work participation rate, each individual must meet the ~~minimum required~~ number of hours ~~averaged over a each month week~~. This differs from the old JOBS requirement in which the hours were averaged among participants, and where participants only had to meet at least 75% of the scheduled hours.

Single parents who are not working 30 hours a week or making an equivalent of 30 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal ~~[of]~~ 30 hours a week.

Two-parent families where one parent is not working at least 35 hours a week or making the equivalent of 35 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal 35 hours a week.

Two parent families who receive federally funded Purchase of Care services who are not working at least 55 hours a week or making the equivalent of 55 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities for one parent must equal 35 hours a week. ~~[The spouse must participate in work or work related activities equaling 20 hours a week.]~~

Teen parents are required to attend school, work, or participate in the employment and training activities. Elementary, secondary, post-secondary, vocational, training school, and participation in a GED program meets participation requirement for the month and is the equivalent to work. If they are not attending one of the above types of school or working for 30 hours a week they must participate in employment and training activities for 30 hours a week.

Single custodial parents with a child under 12 months of age are able to receive an exemption from Employment and Training requirements for a total of 12 months in their lifetime. These 12 months can be used any time the parent has a child less than 12 months of age. Once the youngest child reaches 12 months of age the parents are required to participate in Employment and Training. If they are already working the equivalent of their required Employment and Training Hours (20, 30, ~~[35,]~~ 55), the DCIS II system will code them as volunteers for

Employment and Training.

~~Example: Under JOBS, if Ms. Jones was scheduled for 20 hours and attended 15, she was counted as having participated for 20 hours. Under TANF, Ms. Jones would fail to meet her 20 hours requirement, and DSS could not count her as participating. In addition, under JOBS, you could pair participants and combine their hours to get more participants to the 20 hour level. For instance, one participant working 25 hours could be paired with one participant working 15 hours to get two participants. Under TANF, only one participant could count as having met the 25 hour rule.~~

The monthly participation rate is calculated as follows:

Numerator: # of [TANF and SSP-MOE] families ~~[receiving assistance that include an adult or minor head of household who is engaged in work for the requisite hours with a work-eligible-individual who meet the participation requirement for the month]~~

divided by

Denominator: # of [TANF and SSP-MOE] families that include ~~[an adult or a minor child head of household receiving assistance a work-eligible individual]~~, less # of families sanctioned in that month for failure to participate in work (for up to 3 months in preceding 12 month period), less the number of non-needy caretaker households, ~~less the number of temporarily incapacitated households, less the number of [mothers with a child under 13 weeks old~~ single custodial parents opting to use one of the 12 months allowable exemptions for caring for a child under one year of age. A parent can only use this exemption for a total of 12 months in their lifetime.]

8 DE Reg. 1618 (5/01/05)

3006.2.1

TANF Employment and Training Participants Who Count for TANF Participation

According to provisions of Delaware's Temporary Assistance For Needy Families, the following individuals must participate in work related activities and are included in the denominator for calculating the Federal participation rates.

- ~~[Employable Work-eligible individuals] as defined in DSS TANF policy;~~
- ~~[Employable Work-eligible] adults in the Time-Limited Temporary program;~~
- ~~[Employable Work-eligible Aa]dults for whom the Contract of Mutual Responsibility specifies the employment-related activities that will be required;~~
- ~~[Employable Work-eligible] adults who are not exempt because they are medically unable to participate; and~~
- ~~[Employable Work-eligible] adults who are not exempt because they [are the caretaker parent of an infant under 13 weeks of age used their 12 month limit of child care for a child under one year of age].~~

3006.3 TANF Employment and Training Activities

The Division of Social Services, in conjunction with the Delaware Department of Labor and the Delaware Economic Development Office, has developed employment and training programs to move TANF clients to economic independence. These agencies will conduct initial and ongoing assessments of client employability and appropriateness of employment and training related activities. For individuals deemed unable to work because ~~of~~ ~~he is~~ they are physically or mentally disabled a referral is ~~to be~~ made to the Division of Vocational Rehabilitation. Use Form 134.

The Division ~~will establish~~ has agreements with the Delaware Department of Labor and the Delaware Economic Development Office to offer employment and training activities.

The goal is to place the adult recipient in an unsubsidized job in as timely a manner as possible. The Department of Labor will have the option of recycling through job search those adult recipients who are unsuccessful in finding work, and/or placing the adult recipient in an alternative work experience, OJT, remediation, or a skills training program. Also, both the Division and the Department of Labor are jointly responsible for the development of an Employability Development Plan.

Although the Department of Labor assumes primary responsibility for assigning adult recipients to employment-related activities for this age group, the Division retains responsibility for sanctions, federal reporting

and other TANF requirements.

3006.4 TANF Employment and Training Activities Which Constitute Participation Under TANF

The following are employment-related activities that count as participation:

- Unsubsidized employment[; - means full- or part-time employment in the public or private sector where the employer is not subsidized by TANF or any other public program. (A subsidy does not include employer tax credits for hiring economically disadvantaged workers.)]
- Subsidized private sector employment[; - means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient.]
- Subsidized public sector employment[; - means employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient.
 - The goal of subsidized employment is to move participants into unsubsidized employment, so duration should be limited.
 - Unlike work experience, a participant is paid wages and receives the same benefits as a non-subsidized employee.
 - Preamble outlines 3 subsidized models:
 1. Work supplementation where TANF funds that would otherwise be paid as assistance is paid to employer;
 2. Third party contractor, like a temporary staffing agency, serves as employer of record and is paid a fee to cover salary, expenses and success in placing employees; and
 3. Supported work for individuals with disabilities in an integrated setting.]
- Work experience (including work associated with refurbishing of publicly assisted housing) if sufficient private sector employment is not available[; - means a work activity, performed in return for welfare, that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. The purpose of work experience is to improve the employability of those who cannot find unsubsidized employment. This activity must be supervised by an employer, work site sponsor, or other responsible party on an ongoing basis no less frequently than daily.
 - Participants receive TANF assistance/benefits, not wages.
 - May be considered an “employee” under Fair Labor Standards Act (FLSA) broad definition. If so, participants must be compensated at the minimum wage and overtime rules apply. (See §§ 261.31-32 below for new flexibility in counting hours subject to FLSA.)
 - TANF assistance/benefits that work experience participants receive are not considered wages for Social Security purposes, or taxable income for purposes of the Federal income tax, or the Federal Earned Income Tax Credit.
 - A State may consider a work-experience participant to be an “employee” for purposes of worker’s compensation.]
- On the job training[; - means training in the public or private sector given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.
 - States may subsidize the employer to offset training costs.
 - OJT must be supervised daily.
 - Supported employment may be counted as OJT, if it includes significant on-site training in the skills and knowledge essential to job performance.]
- Job search and job search readiness (six week limit)[; - means the act of seeking or obtaining employment, preparation to seek employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable. Such treatment or therapy must be determined to be necessary and certified by a qualified medical or mental health professional. Job search and job readiness activities

must be supervised by the TANF agency or other responsible party on an ongoing basis no less than daily.

- The “job search” aspect includes looking for suitable job openings, making contact with potential employers, applying for vacancies and interviewing for jobs.
- Job readiness assistance comprises of two activities:
 1. Preparing an individual to obtain employment, such as preparing a resume or job application, interviewing skills, instruction in work place expectations and life skills; and
 2. Substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable.
- A State may only count an individual’s actual hours of participation in treatment or rehabilitation activities.
- If a portion of the treatment or rehabilitation service meets a common-sense definition of another work activity, then the hours associated with that activity may count under the appropriate category, such as work experience.
- For purposes of the 6-week limitation (no more than 4 consecutive weeks), a week consists of 7 consecutive days.]
- Community service programs[- means structured programs and embedded activities in which TANF recipients perform work for the direct benefit of the community under the auspices of public or nonprofit organizations. Community service programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care. Community service programs are designed to improve the employability of recipients not otherwise able to obtain employment and must be supervised on an ongoing basis no less than daily. A State agency shall take into account, to the extent possible, the prior training, experience, and skills of a recipient in making appropriate community service assignments.
 - Family- and self-improvement activities that do not provide a direct benefit to the community may not be counted as community service, including substance abuse treatment, mental health and family violence counseling, life skills and parenting classes, job readiness instruction and caring for a disabled household family member.
 - Community service programs may not include activities that meet the definition of another allowable TANF work activity.
 - Programs must include structured activities that both provide a community service and also improve the employability of participants.
 - Excluded are unstructured and unsupervised activities such as helping a neighbor or friend, and foster parenting.

Participants may be considered an “employee” under the Fair Labor Standards Act (FLSA) broad definition. If so, participants must be compensated at the minimum wage and overtime rules apply]

- Vocational educational programs (not to exceed 12 months)[- means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advanced degree.
 - Vocational educational training must be supervised on an ongoing basis no less than daily. Vocational education does not include basis and remedial education, education in English proficiency, and postsecondary education.
 - Unsupervised homework time may not count; however structured and monitored study sessions which can be documented may be counted.
 - Vocational education must be provided by education or training organizations, such as vocational-technical schools, community colleges, postsecondary institutions and proprietary schools, etc.]

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- Job skills training directly related to employment[- - means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Job skills training directly related to employment must be supervised on an ongoing basis no less frequently than daily.
 - Barrier removal activities, such as substance abuse counseling and treatment, may not be included.]
- Education directly related to employment for a recipient who has not received a high school diploma or equivalent[- - means education related to a specific occupations, job, or job offer. Education directly related to employment must be supervised on an ongoing basis no less frequently than daily.
 - May also include adult basic education and ESL, and where required as a prerequisite for employment education leading to a General Educational Development (GED) or high school equivalency diploma.
 - Participants should make “good or satisfactory progress” in terms of grades and completion timeframes under the standards of the institution.
- ~~[Satisfactory attendance at secondary school or certificate of general equivalence;]~~
- [Satisfactory school attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate - means regular attendance, in accordance with the requirements of the secondary school or course of study, at a secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate. This activity must be supervised on an ongoing basis no less frequently than daily.
 - To count, participants should make “good or satisfactory progress” in terms of grades and timeframes under the standards of the institution.
 - May not include other related educational activities, such as adult basic education or language instruction.
 - Unsupervised homework time may not count.]
- ~~[The provision of child care services to an individual participating in a community service program;]~~
- [Providing child care services to an individual who is participating in a community service program - means providing child care to enable another TANF recipient to participate in a community service program. This activity must be supervised on an ongoing basis no less frequently than daily.]
- ~~Education, training and job search activities. Eligibility will be determined by the employment contractors.~~
- ~~Pay after performance work experience, with the hours determined by dividing the benefits by the minimum wage, plus up to 10 hours of job search weekly;~~
- Regular school attendance or appropriate alternative activity (e.g., training or employment) for dependent children and minor parents[-.]
- ~~Job search may be required for applicants and recipients.~~
- Participation in Vocational Rehabilitation program for eligible recipients.
- ~~[Nursing or nursing assistant activities performed without pay are considered work experience.]~~
- ~~Other work-related activities that assist in obtaining or maintaining employment or improving work performance.~~

Education and Training

Students who do not meet the Blevins Bill requirements in section 3006.6 can receive 1.5 hours of study time for each credit hour if the education or training class requires homework and study time to be completed outside of class time. A 3-credit course would equal 7.5 hours of participation. $(3 + (3 \times 1.5) = 7.5)$. **[Study hours must be supervised to count towards participation.]**

If a recipient is attending training or a program that does not have a designated credit hour, a determination

of the amount of study time required for this training will have to be determined independently. This will be reported on the General Activity Screen in the DCIS II Employment and Training sub-system. A question will ask if this activity requires study time, if it is answered yes, then a mandatory screen will appear to enter the amount of weekly study hours. The amount of study hours necessary will be determined by the contractor.

The student must be in good standing as it relates to attendance and achievement as defined by the program the student is attending.

Example: A participant who is working 15 hours a week and taking 2 three-credit classes will have a participation rate of 30 hours. (15 hours of work + 6 credit hours of class + 9 hours of study time.)

9 DE Reg. 1372 (03/01/06)

~~3006.5 TANF Employment and Training Participants Who Count for TANF Participation~~

~~According to provisions of Delaware's TEMPORARY ASSISTANCE TO NEEDY FAMILIES, the following individuals must participate in work related activities and are included in the denominator for calculating the Federal participation rates.~~

- ~~• Employable as defined in regular DSS TANF policy;~~
- ~~• Only employable adults in the Time Limited Temporary program;~~
- ~~• Adults for whom the Contract of Mutual Responsibility specifies the employment related activities that will be required;~~
- ~~• Employable adults who are not exempt because they are medically unable to participate; and~~
- ~~• Employable adults who are not exempt because they are the caretaker parent of an infant under 13 weeks of age.~~

8 DE Reg. 1618 (5/1/05)

9 DE Reg. 798 (11/01/05)

(Break in Continuity of Sections)

3008 Eligibility of Certain Minors

3008.1.1 Babies Born To Teen Parents

This policy applies to both applicants and recipients not covered by family cap rules.

Babies born after December 31, 1998 to a teenage parent are not eligible for cash assistance (TANF and GA) unless the parent is:

- married; or
- at least eighteen (18) years of age.

An emancipated minor is considered an adult and therefore, the baby would be eligible for cash assistance. If both parents live in the home, both parents must be at least eighteen (18) years of age or married for the baby to be eligible. Once the minor parent turns 18, the parent and the baby are both eligible for cash assistance, if otherwise eligible.

Babies not receiving cash assistance are eligible for all other DSS services and programs including food stamps, grant-related Medicaid, and Welfare Reform child care. In lieu of cash assistance, the Division may provide non-cash assistance services. (See DSSM 3008.1.3)

Determining financial eligibility and grant amounts for an assistance unit which contains a child(ren) affected by this provision:

The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

Exception:

This restriction will not apply when:

- the child is conceived as a result of incest or sexual assault; or
- the child does not reside with his/her parents.

9 DE Reg. 1978 (06/01/06)

3008.1.2 Three Generation Households

In a three (3) generation household, the grandparent could receive benefits for him/herself and for the teen parent but not for the child of the teen parent. This means that there is not grandparent deeming in these cases.

3008.1.3 Providing Non-cash Assistance:

The services that non-cash assistance will provide are as follows:

DSS will offer non-cash assistance to these families after their request for cash assistance has been denied. The purpose of the voucher program is so the caretaker can purchase necessary items for the child denied benefits due to the parent being unmarried and a minor. Necessary items may include formula, if the minor parent and child are not WIC eligible, diapers, baby wipes, clothing. This is not an all inclusive list. Items covered by Medicaid are not eligible. A determination of need is to be completed by the contracted vendor. Though a baby may receive these services in subsequent months, the service ends when the parent either marries or turns eighteen.

A monthly voucher is to be no more than \$69. The primary caseworker will explain that the family could receive a monthly voucher that may cover more than one month, but shall not exceed \$207, the amount of three months of A Better Chance Welfare Reform Program grant awarded to children born before January 1, 1999. When a customer receives a monthly voucher greater than \$69, the customer will be ineligible to receive services as follows:

- For the following month when the voucher is between \$70 and \$138.
- For the following two months when the voucher is between \$139 and \$207.

The primary caseworker will make the initial referral for the non-cash assistance to the contracted vendor. Referrals will include the name and Social Security number of the adult caretaker and the minor parent, the name and date of birth of the baby, address, a phone number for contacting the family and a DCIS II case number. The adult caretaker will contact the vendor if there is a need for services in subsequent months. The case record will be documented when a referral for this program is made to a contracted vendor.

Provide families referred for this service with appropriate vendor address and telephone number.

3008.1.4 Minor Teen Parents

Teen parents are required to attend either:

- elementary;
- secondary;
- post-secondary;
- vocational;
- training school,
- a GED program; or
- work.

If these minor teen parents are not participating in any of the above activities they should be referred to the Employment and Training contractors.

Refer to DSSM 3012.2, DSSM 3012.4 and DSSM 3012.5 to be able to receive TANF.

(Break in Continuity of Sections)**3009 Contract of Mutual Responsibility**

The caretaker enters into a Contract of Mutual Responsibility with DSS. The Contract will specify self-sufficiency components such as, but not limited to, employment activities, cooperation in securing child support, school attendance requirements, family planning, parenting education classes, substance abuse treatment, and immunization requirements. The Contract is designed to be individualized to the specific needs and situation of each family. Therefore, the exact requirements within the Contract may vary from family to family. This document will be revised as the needs and the situation of the family evolve. (See DSSM 3010.2.5)

The State will ensure that services related to these provisions are available to the recipient. Additionally, other supportive services will be available (such as child care) if necessary. If the services are not available to the recipient and it is in the Contract, the recipient will not be sanctioned. The Contract will be modified to reflect that the service is unavailable at that time. For instance, if a recipient was directed to seek substance abuse treatment on an in-patient level, but a bed was not available for four months, that part of the Contract would be suspended until a bed became open for the individual.

In establishing and enforcing the Contract, the DSS worker has primary responsibility for ensuring that clients understand what is expected of them. While sanctions will be imposed for failure to meet the expectations of the Contract, the intended result of the sanction process is to convince clients of the need to cooperate. An important element of the process is "coaching" the client to transcend any barriers to meeting Contract expectations.

~~In the past, such barriers may have been good cause factors for clients not accomplishing what they need to do.~~ Under TANF, however, the client and worker must become partners in efforts to surmount any and all obstacles to success. While it is expected that the client verbalize any difficulties s/he may have or expect to have in meeting TANF requirements, the worker also has a duty to do whatever s/he can to elicit from the client any information needed to identify and overcome hurdles.

Coaching is without question a difficult task, given the multitude and variety of problems a client may face and the many steps along the road to self-sufficiency. Nevertheless the worker needs to embrace it as a critical element in the achievement of our welfare reform objectives.

Certainly we want TANF clients to be clear at all times about their obligation to exercise personal responsibility in exchange for benefits. When clients have a clear understanding, yet still fail to meet their obligations, workers need to respond quickly. The swiftness of our actions will demonstrate the seriousness of our intentions. ~~This was the primary reason we requested federal waiver of the conciliation process.~~

However, the ultimate goal of the sanction process should not only demonstrate how serious we are, but that we are available to help them become self-sufficient. We want clients to realize it is to their advantage to work with us and not against us.

Workers who truly understand the foundations upon which our sanction policies exist are in a better position to successfully steer clients through the welfare reform process. Keep in mind the following guidelines:

a) At every step of the way, workers should make the sanction process clear for clients; that is, explain clearly what the client's responsibilities are and what the consequences are for failure to meet these responsibilities.

b) Encourage clients to discuss any problems they face in meeting TANF requirements. Coach them in a positive way to overcome these hurdles. Offer assistance, but make it clear that the client has ultimate responsibility for meeting requirements.

c) If and when clients fall short of expectations, before taking action to apply sanctions, make sure that clients understand exactly what requirement(s) was not met and the consequences of it. This is not to say that we want workers to offer conciliation, but rather that we want workers to emphasize cause and effect. In this way clients should more readily recognize the benefits of cooperating and doing what is expected in the future.

Sanctions are not our desired result. They are a means to accomplish the goal of client cooperation.

3009.1 Failure to Comply With CMR and Imposition of Sanctions

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning, 2) self-sufficiency and 3) teen responsibility requirements.

1) Enhanced family functioning requirements of the Contract of Mutual Responsibility include, but are not limited to, attending family planning and parenting education sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanctions for non-compliance with these requirements start at \$50.

2) Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training responsibilities, ~~work related and ensuring school attendance requirements for dependent children under age 16.~~ Sanctions for non-compliance with these requirements start at a one-third reduction in benefits result in the closure of the TANF case.

3) Teen responsibility requirements include maintaining satisfactory school attendance. Teens under the age of 16 must maintain satisfactory school attendance. The parent must work with the child and school to ensure satisfactory attendance. If the teen does not maintain satisfactory attendance at school and the parent fails to work with the school or appropriate agency to ensure school attendance, the case will be sanctioned.

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This sanction is an initial reduction of \$50. This reduction will increase by \$50 every month until there is compliance with the requirement. If the parent complies and works with the school the TANF benefit will be restored, even if the child does not return to school.

~~3.~~ Teen responsibility requirements include maintaining satisfactory school attendance, or ensuring satisfactory attendance, for dependent children 16 years of age and older or participating in employment and training activities. The sanction for non-compliance with these requirements is ~~\$68, if the teen does not comply, and an additional \$68 if the caretaker does not work to remedy the situation.~~ the removal of the teen from the assistance grant. The teen can not be added back into the case until verification of school attendance is received or verification of four consecutive weeks of participation and one month of being removed from the grant.

The severity of the sanctions differs depending upon the type and number of violations. Individual penalties and the cure for each are noted in the policy sections which follow. However, when imposing sanctions, these are the rules in which sanctions are applied:

1. The penalty for failure to comply with self-sufficiency requirements of the Contract of Mutual Responsibility (employment and training responsibilities) is ~~a 1/3 reduction of the TANF benefit for the first occurrence, 2/3 reduction of the TANF benefit for the second occurrence and a total loss of the TANF benefit for the third occurrence the closure of the TANF case.~~

2. The penalty for failure to comply with teen responsibility requirements for a child under 16 years of age is a ~~\$68 50~~ reduction in the grant, if the teen does not comply, ~~and an additional \$68 if~~ if the caretaker does not work with the appropriate agencies to remedy the situation, an additional \$50 penalty continues each month until the [mother caretaker] works with the appropriate agency, the child returns to school or the [grand grant] reduces to zero. The only way to cure the sanction is for the ~~[mother caretaker]~~ [mother caretaker] to work with the appropriate agency and/or the child returns to school. If the child does not return to school but [t]he [mother caretaker] has been working with he appropriate agency then the sanction can be lifted.

~~Failures to comply with self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.~~

3. The sanction for teens 16 years or older who do not attend school and/or employment and training activity for the required hours is the removal of that teen from the TANF grant and a reduction in the house hold size. The sanction can only be cured when the teen is removed from the grant for one month and participation in employment and training for four consecutive weeks is verified or satisfactory school attendance is verified.

~~3.4.~~ The penalty for failure to comply with enhanced family functioning requirements of the Contract of Mutual Responsibility is an initial \$50 reduction of the TANF benefit. This reduction will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one, family functioning requirement. Clients will have to comply with all requirements before the sanction can end.

~~4.5.~~ Failing to comply with both enhanced family functioning and self-sufficiency requirements of the Contract of Mutual Responsibility will result in combined penalties for each. ~~For example, both a \$50 reduction and 1/3 reduction to the TANF benefit. For example, impose the \$50 reduction and then close the case.~~

~~Failures to comply with self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.~~

When there are multiple sanctions always impose the monetary sanctions first; enhanced family functioning and teen under 16. The removal of a teen from the case is second, and the self-sufficiency which results in a case closure is last. All sanctions need to be imposed.

3009.2 Sanctions Flow Chart

Below is a flow chart, which describes in graphic detail the sanction process. This chart is intended to be a conceptual representation of the process and does not take into account the level of worker discretion and understanding needed to make sanction decisions. It will give workers a quick review of how the sanction process

~~works and flows in the ideal, but is not a literal account of the way workers will always confront the process in actual practice.~~

~~One thing of note, the chart depicts the eligibility interview, the Employment and Training interview and initial participation with Contractor/DOL programs as one Orientation process not as individual events. This means clients, who fail to attend their employment and training interview and then comply, are not sanctioned a second time if they fail to attend contractor or DOL orientation. It simply means they have not completed the Orientation process and therefore, have not completely cured their initial sanction. In order to show compliance with the entire Orientation process, clients must attend the missed event and demonstrate cooperation for two weeks. Any failure to do this means the initial sanction continues. However, as noted further in these policies, should non-compliance continue beyond two months, workers will initiate a second sanction regardless of completion of the process.~~

3009.3 Benefit Reduction for Multiple Sanction Types

The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be imposed at the same time. The hierarchy is as follows:

~~1. If in place, the one-third penalty for failing to meet work and training requirements and the one-third penalty for not cooperating with school or agency officials to meet attendance requirements for dependent children under the age of 16 are the first to be imposed by DCIS.~~

~~2. 1. If in place, The \$68 sanction for teens 16 and over teens who fail to meet school attendance requirements and an additional \$68 for their parents who do not cooperate to remedy the situation is imposed next is the removal of the teen from the grant first, if applicable.~~

~~3. 2. If in place, The \$50 sanction for failure to meet enhanced family functioning requirements (CMR) and the teen under 16 years of age sanction is first imposed next, by DCIS.~~

~~3. The self sufficiency sanction, failure to meet participation requirements is a full TANF sanction resulting in a case closure. This is imposed last.~~

~~The order in which sanctions are imposed is important, since different sequences result in different benefit amounts. By being familiar with the hierarchy, workers will be able to explain to clients how multiple penalties will impact benefits. because we can not sanction a closed case. If a client has both an enhanced family function and a self-sufficiency sanction for the same period it is important to make sure the enhanced family sanction that reduces the TANF grant is imposed prior to the self sufficiency sanction that closes the case.~~

(Break in Continuity of Sections)

3010 Participation and Cooperation in Developing CMR

It is mandatory that the caretaker enter into a Contract of Mutual Responsibility. The Contract applies to those families in the Time Limited Program and Children's Program, as well as to teen parents. Other family members within the assistance unit may be subject to compliance with provisions of the Contract, even if the caretaker is a non-needy caretaker relative payee.

If the caretaker is a non-needy caretaker relative, the individual would not be required to participate in employment-related activities, but may be required to participate in other Contract activities.

The caretaker may object to certain aspects of the Contract. The caretaker needs to present any objections up front, at the time of the initial Contract or upon Contract revision. DSS retains the ultimate decision making authority as to what elements are put into the Contract of Mutual Responsibility.

DSS expects clients to cooperate in the development of the Contract of Mutual Responsibility. Certain aspects of the Contract, such as, but not limited, to participation in employment-related activities, meeting school attendance requirements and immunization, cannot be amended. However, even though certain aspects cannot be amended, this does not imply that caretakers cannot discuss and/or negotiate Contract requirements. Further, this is not to imply that such discussion and/or negotiation is non-cooperation. To the extent possible, each caretaker should be able to mutually develop her/his Contract. DSS is to give caretakers the opportunity to understand the Contract and its requirements, as well as to discuss the Contract with persons outside the DSS office. Reasons for requesting such an outside review of the Contract include, but are not limited to, language barriers, developmental disabilities, or to seek legal or other counsel. Caretakers therefore, should be granted their requests to remove proposed Contracts from the DSS office in order to review it with another person. This should not be considered non-cooperation.

Negotiating elements of the CMR can mean that aspects of the CMR are waived. On a case by case

basis, elements of the CMR can be waived if good cause exists. If the particular circumstances of a family warrant waiving elements of the CMR it is to be justified and properly documented in the case record.

See Administrative Notice A-10-99 DFS/DSS Procedures.

For example: a parent's only child is terminally ill. It is reasonable to determine that a parent would want to spend as much time with the child as possible. Therefore, waiving school attendance requirements and parenting education requirements are reasonable. Document the child's illness and the reason for the waiving of the CMR requirements in the case record.

3010.1 Penalties for Not Cooperating in Development of CMR

The fiscal sanction for not cooperating, without good cause, in the development of the Contract will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed.

If caretakers are actively negotiating the terms of their Contracts, DSS will not impose the \$50.00 penalty. DSS will provide caretakers up to 10 days to reach a resolution. After this time, DSS will consider caretakers as not cooperating if they refuse to participate in the further development of their Contracts.

DSS will also give those caretakers, who choose to do so, the opportunity to discuss their Contracts with persons outside of the DSS office. DSS will allow caretakers up to 10 days to take Contracts outside of the office, during which DSS will not impose the \$50.00 penalty. DSS will consider caretakers who have not returned Contracts after that time as not cooperating and subject to the \$50.00 penalty.

3010.2 Contract of Mutual Responsibility and Domestic Violence Screenings

3010.2.1 Family Development Profile

The Family Development Profile is a an assessment tool used to identify possible social, family and emotional barriers to self-sufficiency as they affect an individual's ability to obtain and retain employment. The Family Development Profile covers issues of self-esteem, health and family relationships. This tool is designed to surface those issues which, when resolved, will increase the participant's ability to become truly self-sufficient. This assessment tool is a mandatory assessment tool for all adult and teen TANF recipients.

(Break in Continuity of Sections)

3011 Employment and Training and Work

DSS expects ~~[employable work-eligible]~~ adults to participate in either employment or activities related to finding work (e.g., employment and training activities) for ~~[the required number of hours] 30 [, 35, or 55] hours a week for two consecutive weeks prior to TANF benefits to being authorized.~~ The TANF benefit will continue uninterrupted as long as the participation in work or work activities continues for the required number of hours per week (see section 3006.2). ~~Either an employable adult is working or is participating in activities to secure employment.~~ DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses, ~~which are components of the self-sufficiency requirements.~~

3011.1 Employment and Training Requirements

Clients must keep appointments with employment and training staff, cooperate in the development of the Employability Plan, and participate in employment and training activities equivalent to the required weekly amounts.

Clients who have secured employment are expected to continue employment **[unless they have good cause for terminating a job (see Good Cause definition under 3001 Definitions)]** and participate in approved employment and training activities.

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. ~~Since~~ Parents with children under age 16 are expected to exert more influence over their children, ~~and since early school attendance is so important in moving children down the path to self-sufficiency,; this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher penalties for noncompliance.~~ (See section DSSM 3009 and 3012 for requirements and sanctions related to cooperation to ensure school attendance by children 16 and over and children under the age of 16.); ~~A third non-compliance will not result in a permanent but a curable penalty of loss of cash benefits. See DSSM 3011.2.~~

3011.2 Sanctions for Failing to Comply With Requirements

See Administrative Notice: A-7-99 Child Care Issues

Self-sufficiency requirements include those related to employment and training, and work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

~~The fiscal sanction for failure without good cause to meet school attendance requirements for a child under 16 are the same as for other self-sufficiency requirements. This includes teen parents who are dependent children.~~

The penalty for noncompliance with the self-sufficiency requirements will be:

- a) for the first offense, a 1/3 reduction in TANF
- b) for the second offense, a 2/3 reduction in TANF
- e) for the third offense, a loss of all cash benefits.

the closure of the entire TANF case for one month and a mandatory four consecutive weeks of participation. The four consecutive week participation is mandatory to cure the sanction and reopen the case. The case may remain closed longer than one month if the four consecutive weeks of participation have not been completed.

~~The duration of the first and second sanctions will each be two months or until the person complies, whichever is shorter. If, after one month, the person has not complied, DSS will schedule an interview to explain again the participation requirements. If at the end of the two month period there is no demonstrated compliance, the sanction will increase to the next level. If the penalty is related to work non-compliance then the third penalty is permanent loss of benefits, if unless the adult is deemed unemployable, remove the sanction and enter the correct exemption. Then the case may be reopened for the length of time that the adult is not able to work. If there is a third penalty and it is related to school attendance, it can be cured by the adult caretaker cooperating with school officials to remedy the situation.~~

~~The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:~~

- a) for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- b) for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- e) for a third offense, a permanent loss of all cash benefits.

~~The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months or until the individual obtains a job of equal or higher pay.~~

[The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be the closure of the TANF case for one month or until the individual obtains a job of equal or higher pay. If the individual participates for the required amount of hours in approved work related activities for four consecutive weeks the case can be reopened.]

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Contract Requirement	Amount/Duration of Sanction	Increase _____ 2, months _____ if not compliant
Employment and Training	1/3 reduction for 2 months or until compliance whichever is shorter for first offense; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense.	Yes
Caretaker cooperation to ensure School Attendance for children under 16 years	1/3 reductions for 2 months or until compliance whichever is shorter; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense.	Yes
Keeping a job, unless good cause exists to quit the job	If meeting job search requirements, 1/3 reduction for 2 months or until person enters a job of equal or higher pay, whichever is shorter; 2/3 reduction for 2 months or until enters a job of equal or higher pay whichever is shorter for second offense.	No
Keeping a job, unless good cause exists to quit the job	If not meeting job search requirements, full loss of benefits until compliance or either meeting job search requirements or person enters a job of equal or higher pay	N/A

<u>CMR Requirements</u>	<u>Sanctions</u>
<u>Employment and Training/work and Workfare</u>	<u>TANF case closure for one full month plus four consecutive weeks of full participation prior to opening the case.</u>
<u>Child under 16 not attending school</u>	<u>A\$50.00 successive sanction for the teen not attending school when the parent does not work with the school to ensure school attendance.</u>
<u>Child 16 and over not attending school</u>	<u>The removal of the teen from the grant and the reduction in household size.</u>
<u>CMR requirements</u>	<u>An initial \$50.00 reduction in the TANF grant. If the participant has not complied, an additional \$50.00 reduction each month until compliance occurs.</u>

Because the third sanction is for the duration of the demonstration, an additional supervisory review of case circumstances will be required before imposing the third sanction, in order to determine whether good cause for noncompliance exists. Impose the third sanction, after such a review, if good cause is found not to exist. Noncompliance with more than one of the self-sufficiency requirements at a point in time will result in a one-third benefit reduction for each sanction.

Example: A person fails to attend the DOL orientation and, prior to a cure then fails to cooperate with officials to ensure school attendance by his/her 14 year old child. The resulting sanctions would result in a 2/3 (1/3 + 1/3) loss of case benefits.

Note: Under TANF regulations, Section 402(e)(2), DSS cannot impose sanctions when individuals refuse to participate in work or work-related activities if these individuals are single custodial parents with at least one child under age six, and these parents have demonstrated an inability to obtain needed child care. This provision neither

makes parents exempt from participation in work activities, nor makes them exempt from time limits. It only restricts DSS authority to sanction.

Parents must demonstrate the following:

the unavailability of appropriate child care within a reasonable distance from their home or work (reasonable distance is defined as care that is located in proximity to either a parent's place of employment or near the parent's home, generally care that is within one hour's drive);

the unavailability or unsuitability of informal child care by a relative or under other arrangements (unsuitability of informal care is defined as care that would not meet the physical or psychological needs of the child);

the unavailability of appropriate and affordable formal child care arrangements (affordable care is defined as care that would provide access to a full range of child care categories and types of providers ; and appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parents and children).

Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents will have 10 days, either from the date when they first attempted to find child care or ten days from the date DSS instructed them to participate in work activities, to contact the worker. DSS staff will have 20 days to review and decide whether the parents have a legitimate claim. If DSS determines that the parents did not demonstrate their claim, workers are to impose the sanctions. DSS will not sanction parents who have demonstrated their claims. Document reasons in DCIS under Case Remarks.

3011.3 Curing Sanction Penalties

Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of one month, including four consecutive weeks of [the required amount of hours for that household] 30 [, 35, or 55] hours of participation.

Clients, unless indicated otherwise, must participate in the work and/or work related activities ~~attachment model~~ for a minimum period of two four consecutive weeks.

~~EXAMPLE: A client fails to keep her initial appointment with Employment and Training staff, and to meet the required hours of participation and is sanctioned. In order to cure this sanction, the client must not only keep her appointment with Employment and Training staff, but must also keep her appointment with DOL contact the Employment and Training staff, and follow through with her DOL work activity for 30[, 35, or 55] hours a week (client's required hours) for a minimum period of two four consecutive weeks before the sanction is considered cured.~~

~~The failure to keep appointments with both Employment and Training staff and DOL staff in the above example would be considered the first offense for sanctioning purposes. (It is a first offense because both Employment and Training and DOL are part of the same Orientation process, for which the cure can only be participation in DOL activity for two weeks). Any failure to continue the recommended activity after that point would be considered a second offense. For which the cure is participation in the activity to which the person was previously assigned, or an activity designed by Employment and Training to lead to full participation, for a minimum period of two weeks.~~

~~The sanction for quitting a job will end when the individual returns to the former job or obtains a job of equal or higher pay. However, cash benefits can be restored at a reduced level, depending upon the number of offenses (first or second), as long as there is compliance with the job search requirement for a period of two weeks. If after two months, clients have maintained compliance with the job search requirement, benefits can be restored in full.~~

~~DSS expects employable adults to participate in either employment or activities related to finding work (e.g., employment and training activities) for TANF benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. The failure of clients to maintain either of these activities is is ~~are~~ a sanctionable offense, ~~which are similar components of the employment and work related activity requirements.~~~~

3012 School Attendance Requirements

School attendance requirements exist for both adults and children. Children are expected to maintain satisfactory school attendance. Acceptable school attendance will be defined by the individual school. If the school does not define what is acceptable, use an 85% attendance rate.

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. These penalties will differ depending upon whether a child is under the age of 16 or is over age 16.

3012.1 Sanctions and Cures for Unsatisfactory School Attendance

CHILDREN UNDER 16 YEARS OLD

The fiscal sanction for noncompliance, without good cause, with school attendance (including dropping out of school) or alternative participation requirements will be:

A \$50.00 reduction in the TANF grant each month if the parent does not work with the teen and the school to ensure school attendance. If the parent works with the school and the teen still does not comply with the requirement the sanction is removed.

CHILDREN AGE 16 AND OLDER, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN OR HEAD OF HOUSEHOLD

The fiscal sanction for noncompliance, without good cause, with school attendance, including dropping out of school, or alternative participation requirements will be:

A reduction of \$68.00 in TANF which represents the teen's portion of the grant. The removal of the child from the grant and the subsequent reduction in household size.

If the parent or caretaker is not cooperating with school officials or other agencies, as appropriate, to remedy the situation, an additional \$68.00 reduction in TANF will be imposed.

Teens who drop out of school can only have their need restored to the grant if they participate in work, or agree to re-enroll in school. So for teens to be in satisfactory compliance with school attendance requirements, they will either have to remain in school or, if not, they must be working.

To cure the sanction teens over 16 must first serve a full month sanction and either return to school, work, or participate in employment and training for four consecutive weeks whichever is longest.

3012.2 Curing Sanction Penalties

Compliance exists when there is evidence that the caretaker has cooperated with school officials, and the student has subsequently attained satisfactory attendance at the school.

Teen Parent up to age 18 Education/Training Requirements

Teen parents are required to attend either a). elementary, b). secondary, c). post-secondary, d). vocational, or e). training school, participate in a GED program or work.

Sanction for not meeting Teen Parent Education/Training requirement

A reduction of \$68.00 in TANF.

Curing Teen Parent Education/Training Sanction

The sanction will end when either the Teen Parent re-enrolls in school or GED program, or participates in work.

(Break in Continuity of Sections)

3031 Work For Your Welfare

When a family applies for TANF assistance they will be referred to the contractor to participate and complete their required two consecutive weeks of required hours (30, 35, or 55) in approved employment related activities.

All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single adult recipients, who reach their 22nd month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. Additionally, all TANF recipients who are employed must have regular earnings of the current **[federal state]** minimum wage at twenty-five hours per week. (The current **[federal state]** minimum wage is **[\$5.15 \$6.15]** per hour, which at **[25 30]** hours per week equals **[\$128.75 \$184.50]** per week earnings.) A person who is employed but not earning at least the equivalent of the current **[federal state]** minimum wage at twenty-five thirty hours per week will be considered mandatory for Work for Your Welfare. A contracted worker must receive his or her wages on a regular basis to be exempted from this requirement.

Work for Your Welfare is defined as a work experience **[or community service]** program **[that is subject to the Fair Labor Standards Act for minimum wage requirements]** in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity approved

~~employment related activities~~ per week. The failure to complete ~~job search~~ the required 10 hours of approved activities as required will result in a ~~progressive 1/3 sanction~~ full family sanction, closing the entire TANF case. For two parent households, one parent must participate in the work for your welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

[A work-eligible individual who participates in a work experience or community service program that is subject to the Fair Labor Standards Act (FLSA) minimum wage requirements cannot be required to participate in that work activity for more hours than the value of the welfare grant and food stamps divided by the minimum wage. Individuals or families who complete the required workfare calculated hour of participation under the minimum wage requirement of the FLSA will have satisfied the 20-hour per week core activity requirement, if the calculated participation hours fall short of 20 hours per week.]

Currently DSS operates the work for your welfare program under contract with a work for your welfare services provider. The provider assumes responsibility for the assessment, placement and monitoring of all work for your welfare participants in unsalaried work assignments. The work assignments are with public or nonprofit organizations. In return for their services, participants earn the amount of the benefit they are eligible to receive.

Work for your welfare is not preferable to participants obtaining unsubsidized employment. Though the work for your welfare assignment should be a safe assignment, it should not be more attractive than unsubsidized employment.

DSS is to ensure that no participants placed in work for welfare activities displace regular paid employees of any of the organizations providing the placements.

Since placements are not voluntary, DSS expects participants to accept assignments unless the assignment represents an unreasonable health and safety risk (e.g., the participant has a health condition, which would be aggravated by the assignment).

Participants cannot appeal their assignments to work for your welfare work sites.

8 DE Reg. 1024 (1/1/05)

8 DE Reg. 1618 (5/1/05)

3031.1 Hours of Participation - One Parent Families

Effective 10/1/98, participants in single parent households are required to work for up to 30 hours per week. The 30 hours are the maximum participation hours. DSS determines the actual hours of participation by dividing the TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceeds 30 hours per week, participants are to complete no more than the 30 hours maximum. In addition to these hours, every participant is expected to participate in 10 hours of ~~job search~~ approved employment related activities per week.

EXAMPLE: The TANF grant amount for two is \$270. Divided by the minimum wage (\$6.15), this equates to 52 hours per month for the TANF grant (always round down to the nearest whole number). The Food Stamp allotment amount is \$224. Divided by the minimum wage (\$6.15), this equates to 43 hours per month for the Food Stamp allotment. Together this would mean that the participant must work 95 hours per month. Divide the 95 monthly hours by 4.33 (number of weeks per month) to arrive at a weekly participation rate. 95 divided by 4.33 is 21 hours per week. So the above participant must participate 21 hours per week in a work-for-your welfare placement ~~in order to receive his/her full grant and allotment~~.

[A work-eligible individual who participates in a work experience or community service program that is subject to the Fair Labor Standards Act (FLSA) minimum wage requirements cannot be required to participate in that work activity for more hours than the value of the welfare grant and food stamps divided by the minimum wage. Individuals or families who complete the required workfare calculated hour of participation under the minimum wage requirement of the FLSA will have satisfied the 20-hour per week core activity requirement, if the calculated participation hours fall short of 20 hours per week.]

~~Total performance hours are based on grant amounts regardless of sanctions. In other words, a participant who has a 1/3 sanction does not perform fewer hours because of the sanction. Performance is based on what the total grant would have been without the sanction.~~

EXAMPLE: A family of two has a grant of \$270. The grant, however, has been reduced by ~~4/3~~ \$50.00 because of an ~~employment and training sanction~~ a CMR sanction. When DSS assigns this adult to work,

the total performance hours are based on the grant amount of \$270 despite the ~~4/3 \$50.00~~ sanction. The 10 hours of approved employment related activities per week ~~job-search~~ requirement still applies. The failure to complete the 10 hours of approved employment related activities is a sanctionable offense, punishable by the progressive 1/3 penalty for failure to comply with an employment and training activity resulting in a full TANF sanction which closes the entire TANF case.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted entire TANF case closed. For each hour not worked, participants ~~will have the grant adjusted downward by the amount of the minimum hourly wage.~~

~~EXAMPLE: A participant in a family size of 2 is required to work 52 hours in a month. The participant however, only works 50 hours. This participant will have the grant reduced by \$6.15 (minimum wage) x 2. DSS will reduce the grant amount for this participant by \$10.00, always rounding down to the nearest dollar amount.~~

Once DSS determines the hours participants are to work, the contractor will assign participants to a work site. At the work site, participants must complete their assigned hours within the time period determined by the contractor and the work site.

3031.2 Hours of Participation - Two Parent Families

Two parent households must participate in work for your welfare as soon as DSS determines the household eligible for benefits. In two parent households, one parent must participate at their assigned maximum performance hours (35 hours per week), and the second parent must participate in required employment related activities as determined by DSS and the DSS work for your welfare contractor, unless the second parent is otherwise exempt (e.g., caring for a disabled child or is incapacitated). DSS requires the second parent in the two-parent household to go to the workfare contractor to be placed in a component other than workfare approved employment related activities.

If the families of two-parent households receive federally subsidized child care, together they must participate in at least 55 hours per week of required activity. In this case, one parent will do work for your welfare activity, and the second parent must participate in a sufficient number of hours with the work for your welfare contractor so that, when combined with the hours of the first parent, together they equal 55 hours. If the one parent in the two parent household who is participating in work for your welfare does not complete his/her required performance hours, the grant allowance for the entire family is reduced by the hours not worked times the minimum wage TANF case is closed. The grant adjustment occurs case closes regardless of whether the second parent completed his/her required hours of employment related activities.

If the second parent does not complete or refuses to complete the required employment related activities, DSS will impose a separate 1/3 sanction on this second parent TANF full family sanction which closes the entire TANF case. This sanction will increase by 1/3 as long as this second parent refuses to complete his/her required activities. DSS will treat the second parent's 1/3 sanctions separately from the first parent's sanctions. For example, if the first parent in this two parent family already has a 1/3 sanction, the 1/3 sanction for the second parent will not increase the sanction level to 2/3 for the entire family. However, the highest sanction level of either parent will determine the entire sanction level for the family

[A work-eligible individual who participates in a work experience or community service program that is subject to the Fair Labor Standards Act (FLSA) minimum wage requirements cannot be required to participate in that work activity for more hours than the value of the welfare grant and food stamps divided by the minimum wage. Individuals or families who complete the required workfare calculated hour of participation under the minimum wage requirement of the FLSA will have satisfied the 20-hour per week core activity requirement, if the calculated participation hours fall short of 20 hours per week.]

3031.3 Initiating Work For Your Welfare—One Parent Families Reserved

3031.3.1 ~~Families That Have A Forty-eight (48) Month Time Limit Who Are Continuously On Assistance: Reserved~~

~~DSS will alert single parent families to report to the work for your welfare contractor in the 22nd month of their receipt of benefits. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.~~

~~Participants whose cases are closed can only have benefits restored once they~~

~~have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.~~

~~Participants are to begin their work for your welfare assignment on the 12th of the 23rd month of benefit receipt. Participants will have until the 11th of their 24th month to complete their work for your welfare monthly assignment in order to receive a benefit for their 25th month. Otherwise, DSS will reduce benefits for the 25th month based on any hours not worked.~~

~~FOR EXAMPLE: Mary Jones is a single parent receiving benefits. September 1998 is her 22nd month of TANF benefit receipt. On Post Adverse Action day in August, Mary's October benefit as well as her work for your welfare requirement is calculated. A letter is generated to Mary informing her that she must participate in work for your welfare beginning in October. The letter also informs her of the required hours per day she must complete, and that she will have from October 12th until November 11th to complete her assignment if she is to get benefits in December. If Mary does not complete any of her Work For Your Welfare hours, she receives no benefit for December and her case closes. In order for her to start receiving benefits again, Mary would have to agree to go to her assigned Work For Your Welfare work site, and cooperate by completing her assigned hours for up to two weeks. If she fails to do this, her case remains closed.~~

~~3031.3.2 Families That Have A Thirty-Six Month Time Limit And Families That Have A Forty-eight Month Time Limit Who Reapply On or After January 1, 2000 Reserved~~

~~DSS will alert single adult families to report to the work for your welfare contractor immediately after they are approved to receive benefits. Participants will be required to participate in the Work For Your Welfare program activities to receive benefits for the month following initial approval. The contractor will schedule participants for an interview for assessment and placement in a work for welfare activity. Participants' failure to keep their scheduled interview with the contractor will result in the progressive 1/3 penalty for an employment and training activity.~~

~~Participants whose cases are closed can only have benefits restored once they have agreed to and have cooperated for two weeks with their work for your welfare assignment. If a participant fails to cooperate by not completing any portion of this two weeks of his/her work for your welfare placement, DSS will not restore benefits.~~

~~FOR EXAMPLE: Sammy Smith is a single parent who applied for and was approved to receive TANF on December 2, 2000. A letter is generated to Sammy informing him that he must participate in work for your welfare beginning the following month. The letter also informs him of the required hours per day he must complete, and that he will have from January 12th until February 11th to complete his assignment if he is to get benefits in March.~~

~~3031.4 Initiating Work For Your Welfare - Two Parent Families~~

~~For two parent families, only one parent will have to complete a work for your welfare assignment. DSS will inform the family of their work for your welfare obligation once the family is eligible for benefits, usually within 30 days of the intake interview refer the family to the contractor at the time of application for TANF. In addition, the other parent in the family, unless exempt, must also participate in employment and training activities. Participation in Employment and Training for the required hours is required for two weeks prior to the receipt of benefits. Again, DSS will send a letter to the family instructing them that one parent must report to a work for your welfare assignment and the other parent must participate with the work for your welfare contractor in a component other than work for your welfare. The family must decide which parent will complete the work for your welfare assignment and which parent will participate in employment and training activities with the work for your welfare contractor. The failure to report to the contractor will result in a progressive 1/3 penalty for an employment and training activity. In addition, the parent who participates in the work for your welfare assignment must also complete 10 hours of job search approved employment related activities per week.~~

~~The following month is the first required month for which participation hours are calculated. DSS will calculate hours the same as it does for single parent families. That is, the parent in the two parent family must report by the 12th of the month and will have until the 11th of the following month to complete his/her work for your welfare hours.~~

~~For Example: Janet and Jim Roberts apply for cash assistance in October. By November DSS~~

determines them eligible. The family decides that Jim will complete the Work For Your Welfare hours. Having calculated the hours Jim must complete, DSS sends them a letter instructing Jim that he has from November 12th until December 11th to complete his hours if the family is to receive benefits in January. In addition, the letter instructs Janet that she is to report to the Work For Your Welfare contractor to participate in a component other than Work For Your Welfare.

3031.5 Ending a Work For Welfare Placement

Work for welfare placements will end when any of the following circumstances occur:

- The participant secures a full-time, non-subsidized job or a part-time, non-subsidized job of ~~25~~ 30 hours or more.
- The participant becomes exempt. Exemptions, however, can only occur if DSS declares participants unemployable, using the standard TANF definition for unemployable. In this case, DSS will transfer the participants to the Children's Program under TANF.
- The participant requests an end to benefits payments.
- When the time limit has been reached.

Note: Participants in either one parent or two parent households are exempt from work for your welfare participation if a parent is working ~~25~~ 30 or more hours per week in a non-subsidized job.

8 DE Reg. 1024 (1/1/05)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 & 1718 (18 **Del.C.** §§ 311, 1718)
18 **DE Admin. Code** 504

FINAL

ORDER

504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants

Proposed changes to Regulation 504 (18 **DE Admin. Code** 504) relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants were published in the *Delaware Register of Regulations* on July 1, 2006. The comment period remained open until August 2, 2006. There was no public hearing on the proposed changes to Regulation 504. Public notice of the proposed changes to Regulation 504 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

No public comment was received as a result of the publication of the proposed changes in the July 2006 edition of the *Delaware Register of Regulations*. The purpose of the proposed amendment was to amend section 8.2.2 of the regulation so that adjusters and producers would both have the same number of required hours in ethics as part of their biennial educational obligation. As a result of the proposed change, the required number of ethics credits for public adjusters will decrease from four hours to three hours for each reporting period.

The adjustment to the required ethics hours from four to three allows Delaware to conform to the same requirement as other states as part of the uniformity agreement within the National Association of Insurance Commissioners that resulted from the passage of the Gramm Leach Bliley Act.

Findings of Fact

Based on Delaware law and the record in this docket, I find that it is appropriate to amend section 8.2.2 of Regulation 504 to require that adjusters obtain three credit hours of ethics as part of their biennial educational requirement. I further find that this change shall be effective for reporting periods commencing February 1, 2006.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 1718 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby amend section 8.2.2 of Regulation 504 as follows:

8.2.2 Resident adjusters, public adjusters and Fraternal Agents shall be required to fulfill twelve (12) credit hours of Department approved education subjects, ~~four (4)~~ three (3) of which shall be in ethics subjects during each biennial reporting period.

Text and Citation

The text of the proposed amendments to Regulation 504 last appeared in the *Register of Regulations* Vol. 10, Issue 1, pages 60-62.

IT IS SO ORDERED this 10th day of August 2006.

Matthew Denn, Insurance Commissioner

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 60 (10 DE Reg. 60). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register* or contact the Department of Insurance for more information. A complete set of the rules and regulations for the Department of Insurance are available at:

<http://www.state.de.us/research/AdminCode/title18/index.shtml#TopOfPage>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF SOIL AND WATER CONSERVATION**

Statutory Authority: 7 Delaware Code, Section 6010 and 29 Delaware Code, Section 8001
(7 **Del.C.** §6010; 29 **Del.C.** §8001)

Secretary's Order No. 2006-S-0040

5101 Sediment and Stormwater Regulations

Date of Issuance: September 14, 2006

Effective Date: October 11, 2006

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 adopt a final regulation.

On July 20, 2006, Governor Minner signed into law Senate Substitute No 1 for Senate Bill No 357, which added a new Section 4003A to Title 7, Chapter 40 of the **Delaware Code**, which regulates flooding, erosion and sedimentation control and stormwater management. The Department determined that its current regulations, Delaware Sediment and Stormwater Regulations, as codified at 7 *Delaware Administrative Code* §5101 *et seq.* ("Regulations"), needed to be amended to reflect this change in law. Consequently, the Department determined to use the informal process under the *Section 10113 (a)(5)* Delaware Administrative Procedures Act ("APA"), 29 **Del.C.** §10113(a)(5) in order to adopt this amendment to its regulations. The informal procedure allows state agencies to promulgate "amendments to existing regulations to make them consistent with changes in basic law

but which do not otherwise alter the substance of the regulation.” 7 **Del.C.** §10113(a)(5). The amendment in Appendix A satisfies the APA’s requirements for the exemption because it tracks the change in law.

The Department hereby amends its Regulations by the addition of subsection 10.3.4.4, as shown in Appendix A hereto. The complete version of the Regulations, as amended, is set forth in Appendix B. The Department also intends to open a proposed formal rulemaking proceeding in the future to provide more interpretative regulations.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts as a final regulation the regulation set forth in the Appendix A under 29 **Del.C.** §6010 (a), and 29 **Del.C.** §10113(a)(5) insofar as the amendment of the regulations is made to be consistent with the changes in the basic law;

2. The amendment of the Regulations is exempt from the public hearing and notice requirements that otherwise would apply to the promulgation of a regulation, and is appropriate to reflect a change in law as soon as possible; and

3. The Department shall provide written notice to the persons affected by the Order, as determined by the Department, those persons who requested to receive all regulations, and will submitted to the *Delaware Register of Regulations* for publication in its next available issue.

John A. Hughes, Secretary

5101 Sediment and Stormwater Regulations

(Break in Continuity of Sections)

10.0 Specific Design Criteria and Minimum Standards and Specifications

10.1 General submission requirements for all projects requiring sediment and stormwater management approval include the following information:

10.1.1 A standard application form,

10.1.2 A vicinity map indicating north arrow, scale, and other information necessary to locate the property or tax parcel,

10.1.3 A plan at an appropriate scale accompanied by a design report and indicating at least:

10.1.3.1 Name and address of:

10.1.3.1.1 The owner of the property where the project is proposed;

10.1.3.1.2 The land developer; and

10.1.3.1.3 The applicant.

10.1.3.2 The existing and proposed topography, as required on a case by case

basis.

10.1.3.3 The proposed grading and earth disturbance including:

10.1.3.3.1 Surface area involved; and

10.1.3.3.2 Limits of grading including limitation of mass clearing and grading

whenever possible.

10.1.3.4 Stormwater management and stormwater drainage computations,

including:

10.1.3.4.1 Pre- and post-development velocities, peak rates of discharge, and inflow and outflow hydrographs of stormwater runoff at all existing and proposed points of discharge from the site,

10.1.3.4.2 Site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the land disturbing activity, and

10.1.3.4.3 Design details for structural controls.

10.1.3.5 Erosion, sediment control, and stormwater management provisions

including:

10.1.3.5.1 Provisions to preserve top soil and limit disturbance;

10.1.3.5.2 Details of site grading, and;

10.1.3.5.3 Design details for structural controls which includes diversions

and swales.

10.1.4 Federal Emergency Management Agency flood maps and federal and State protected wetlands, where appropriate.

10.1.5 The appropriate plan approval agency shall require that plans and design reports be sealed by a qualified design professional that the plans have been designed in accordance with approved sediment and stormwater ordinances, regulations, standards and criteria. The appropriate plan approval agency may waive this requirement on a case by case basis.

10.1.6 Additional information necessary for a complete project review may be required by the appropriate plan approval agency as deemed appropriate. This additional information may include items such as public sewers, water lines, septic fields, wells, etc.

10.2 Specific requirements for the erosion and sediment control portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before that modification may be applied and that modification shall be subject to public review and comment prior to adoption.

10.2.1 All plans shall include details of temporary and permanent stabilization measures including placement of the following statement on all plans submitted for approval. Following soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within 14 calendar days as to the surface of all perimeter sediment controls, topsoil stockpiles, and all other disturbed or graded areas on the project site.

These requirements do not apply to those areas which are shown on the plan and are currently being used for material storage, or for those areas on which actual earth moving activities are currently being performed.

10.2.2 All plans shall be consistent with the standards and specifications contained in the Delaware Erosion and Sediment Control Handbook, and approved supplements. The supplements shall be subject to public review and comment prior to their incorporation in the Erosion and Sediment Control Handbook.

10.2.3 A sequence of construction shall be contained on all plans describing the relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, at a minimum, include the following activities:

- 10.2.3.1 Clearing and grubbing for those areas necessary for installation of perimeter controls;
- 10.2.3.2 Construction of perimeter controls;
- 10.2.3.3 Remaining clearing and grubbing;
- 10.2.3.4 Road grading;
- 10.2.3.5 Grading for the remainder of the site;
- 10.2.3.6 Utility installation and whether stormdrains will be used or blocked until after completion of construction;
- 10.2.3.7 Final grading, landscaping, or stabilization; and
- 10.2.3.8 Removal of sediment controls.

10.2.4 The plans shall contain a description of the predominant soil types on the site, as described by the appropriate soil survey information available through the local Conservation District.

10.2.5 Unless an exception is approved on a case by case basis or an exception is approved for a specific type of activity by the appropriate plan approval agency, not more than 20 acres may be cleared at any one time. Once grading is initiated in one 20 acre section, a second 20 acre section may have stumps, roots, brush, and organic material removed. This will necessitate the phasing of construction on sites in excess of 20 acres to minimize areas exposed of ground cover and reduce erosion rates. Grading of the second 20 acre section may not proceed until temporary or permanent stabilization of the first 20 acre section is accomplished.

10.3 Specific requirements for the permanent stormwater management portion of the sediment and stormwater management plan approval process include, but are not limited to, the following items. The appropriate plan approval agency may modify the following items for a specific project or type of project. Modification for a specific type of project will require the concurrence of the Department before the modification may be applied and the modification for a type of project shall be subject to public review and comment.

10.3.1 It is the overall goal of the Department to utilize stormwater management as a means to minimize water quantity and water quality impacts due to land disturbing activities and to mimic pre-development hydrology, to the maximum extent practicable, in regards to the rate, volume and duration of flow. These

regulations will provide general design requirements that must be adhered to in the absence of Designated Watershed or Subwatershed specific criteria.

10.3.2 All hydrologic computations shall be accomplished using the methodologies from the most recent U.S.D.A. Natural Resources Conservation Service Technical Releases 20 or 55, or other methods as approved by the Department. The storm duration for computational purposes shall be the 24 hour rainfall event. For projects south of the Chesapeake and Delaware Canal, the Delmarva Unit Hydrograph shall be incorporated into the design procedure.

10.3.3 Stormwater management requirements for a specific project shall be based on the entire area to be developed, or if phased, the initial submittal shall control that area proposed in the initial phase and establish a procedure and obligation for total site control.

10.3.4 Water quantity control is an integral component of overall stormwater management. Control of peak discharges will, to some extent, prevent increases in flooding. The following design criteria for peak flow control is established for water quantity control purposes, unless a waiver is granted based on a case-by-case basis:

10.3.4.1 Projects in New Castle County that are located north of the Chesapeake and Delaware Canal shall not exceed the post-development peak discharge for the 2, 10, and 100 year frequency storm events at the pre-development peak discharge rates for the 2, 10, and 100 year frequency storm events.

10.3.4.2 Projects in New Castle County that are located south of the Chesapeake and Delaware Canal, Kent County, and Sussex County shall not exceed the post-development peak discharge for the 2 and 10 year frequency storm events at the pre-development peak discharge rates for the 2 and 10 year frequency storm events.

10.3.4.3 Watersheds, other than Designated Watersheds or Subwatersheds, that have well documented water quantity problems may have more stringent, or modified, design criteria that is responsive to the specific needs of that watershed. Modified criteria for that watershed must receive Departmental approval, and all projects reviewed and approved by the appropriate plan approval agency shall meet or exceed the modified criteria. Proposed modification of criteria for a watershed shall be subject to public review and comment prior to implementation.

10.3.4.4 In addition to the peak flow control design criteria contained in this Section, projects in the Mill Creek, Little Mill Creek, Red Clay Creek, White Clay Creek, Persimmon Creek and Shellpot Creek watersheds shall demonstrate successful management of any increase in stormwater runoff volume from pre-development land use conditions. Successful management of increased stormwater volume shall include but not be limited to: recharge, infiltration and re-use where soils and site conditions are applicable. For any increase in volume that cannot be recharged, infiltrated or re-used, volume management may be achieved by modifying the release rate for the increase in volume so as not to increase the flood elevation for all storms up to and including the 100 year return period.

10.3.5 Water quality control is also an integral component of stormwater management. Control of runoff from small, frequent rainfall events on-site will minimize further degradation of downstream water quality and habitat. The following design criteria are established for water quality protection unless a waiver or variance is granted on a case-by-case basis.

10.3.5.1 In general, the preferred option for water quality protection shall be those practices collectively referred to as "Green Technology BMP's". Other practices shall be considered only after preferred practices have been eliminated for engineering or hardship reasons as approved by the appropriate plan approval agency.

10.3.5.2 Water quality practices shall be designed to manage the rate and volume of flow from the 2.0" NRCS Type II rainfall event, up to a maximum of 1.0" of runoff.

10.3.5.3 Alternative stormwater quality practices may be acceptable to the Department and/ or the plan approval agency if the removal efficiency for suspended solids meets or exceeds 80% as demonstrated by scientifically independent evaluation and monitoring performance data.

10.3.5.4 The Department and/ or the plan approval agency may require other acceptable stormwater quality practices if a receiving waterbody has been identified as impaired, or designated with a specific pollutant reduction target necessary to meet State of Delaware water quality regulations.

10.3.5.5 Water quality practices may also be acceptable to the Department and/ or the plan approval agency if they are designed to reduce pollutant loading from a specific post-development source.

The Department and/or the plan approval agency will determine if this criterion for water quality Best Management Practices is appropriate.

10.3.5.6 The Department will develop policy and maintain documentation related to the performance of water quality practices. The Department will also provide guidance for the design, appropriate use and required maintenance of water quality practices. These shall include structural and non-structural practices in addition to source reduction management strategies.

10.3.5.7 The Department and/or the plan approval agency will review the specific water quality practices proposed in a Sediment and Stormwater Management Plan, and review, approve or deny approval of the plan based on the criteria specified in Section E. of these regulations.

10.3.6 All ponds that are constructed for stormwater management shall be designed and constructed in accordance with the U.S.D.A. Soil Conservation Service Small Pond Code 378, dated September, 1990, as approved for use in Delaware.

10.3.7 Any pond utilized for water supply purposes, or for irrigation, must obtain approval from the Department for that use pursuant to Chapter 60.

10.3.8 Where ponds are the proposed method of control, the developer shall submit to the approving agency, when required, an analysis of the impacts of stormwater flows downstream in the watershed for the 100 year frequency storm event.

The analysis shall include hydrologic and hydraulic calculations necessary to determine the impact of hydrograph timing modifications of the proposed development, with and without the pond, on downstream dams, highways, structures, or natural points of constricted streamflows past which the timing effects would be considered negligible. The results of the analysis will determine the need to modify the pond design or to eliminate the pond requirement. Lacking a clearly defined downstream point of constriction, the downstream impacts shall be established, with the concurrence of the approving agency, downstream of a tributary of the following size:

10.3.8.1 The first downstream tributary whose drainage area equals or exceeds the contributing area to the pond; or

10.3.8.2 The first downstream tributary whose peak discharge exceeds the largest designed release rate of the pond.

10.3.9 Where existing wetlands are intended as a component of an overall stormwater management system, the following criteria shall be adhered to:

10.3.9.1 The only disturbance to the wetland, for the purposes of these regulations, shall be that disturbance caused by the stormwater management pond embankment placement and construction; or

10.3.9.2 The applicant can demonstrate that the intended or functional aspects of the stormwater management facility and wetlands are maintained or enhanced, or the construction in the wetland for stormwater management is the only reasonable alternative.

10.3.9.3 All other necessary State and federal permits can be obtained.

10.3.10 Designs shall be in accordance with standards developed or approved by the Department, which are subject to public review and comment.

10.3.11 Ease of maintenance must be considered as a site design component. Access to the stormwater management structure must be provided for in the design, and land area adjacent to the structure must be set aside for disposal of sediments removed from the structure when maintenance is performed. The land set aside for pond maintenance shall be sized as follows:

10.3.11.1 The set aside area shall accommodate at least 2% of the stormwater management basin volume to the elevation of the 2 year storage volume elevation;

10.3.11.2 The maximum depth of the set aside volume shall be one foot;

10.3.11.3 The slope of the set aside area shall not exceed 5%; and

10.3.11.4 The area and slope of the set aside area may be modified if an alternative area or method of disposal is approved by the appropriate plan approval agency.

10.3.12 A clear statement of defined maintenance responsibility shall be established during the plan review and approval process.

10.3.13 All ponds shall have a forebay or other design feature to act as a sediment trap. A reverse slope bench must be provided one foot above the normal pool elevation for safety purposes and all embankment ponds, having a normal pool, shall have a drain installed to facilitate maintenance.

10.3.14 The use of infiltration practices for the disposal of stormwater runoff is classified by the USEPA as an underground injection control practice, class V injection well. The appropriate plan approval agency shall forward a copy of all such approvals and the results of all construction inspections to the Department's Underground Injection Control program manager.

10.3.15 Infiltration practices have certain limitations on their use on certain sites. These limitations include the following items:

10.3.15.1 Areas draining to these practices must be stabilized and vegetative filters established prior to runoff entering the system. Infiltration practices shall not be used if a suspended solids filter system does not accompany the practice. If vegetation is the intended filter, there shall be, at least, a 20 foot length of vegetative filter prior to stormwater runoff entering the infiltration practice;

10.3.15.2 The bottom of the infiltration practice shall be at least three feet above the seasonal high water table, whether perched or regional, determined by direct piezometer measurements which can be demonstrated to be representative of the maximum height of the water table on an annual basis during years of normal precipitation, or by the depth in the soil at which mottling first occurs;

10.3.15.3 The infiltration practice shall be designed to completely drain of water within 48 hours.

10.3.15.4 Soils must have adequate permeability to allow water to infiltrate. Infiltration practices are limited to soils having an infiltration rate of at least 1.02 inches per hour.

Initial consideration will be based on a review of the appropriate soil survey, and the survey may serve as a basis for rejection. On-site soil borings and textural classifications must be accomplished to verify the actual site and seasonal high water table conditions when infiltration is to be utilized.

10.3.15.5 Infiltration practices greater than three feet deep shall be located at least 20 feet from basement walls;

10.3.15.6 Infiltration practices designed to handle runoff from impervious parking areas shall be a minimum of 150 feet from any public or private water supply well;

10.3.15.7 The design of an infiltration practice shall provide an overflow system with measures to provide a non-erosive velocity of flow along its length and at the outfall; and

10.3.15.8 The slope of the bottom of the infiltration practice shall not exceed five percent. Also, the practice shall not be installed in fill material as piping along the fill/natural ground interface may cause slope failure.

10.3.15.9 Unless allowed on a specific project, infiltration practices will be used primarily for water quality enhancement only.

10.3.15.10 An infiltration practice shall not be installed on or atop a slope whose natural angle of incline exceeds 20%.

10.3.16 A regional approach to stormwater management is an acceptable alternative to site specific requirements. As a substitute control practice, regional stormwater management structures shall be required to meet the following items:

10.3.16.1 They shall have a contributory drainage area not in excess of 400 acres unless, on a case by case basis, a larger drainage area is approved by the appropriate plan approval agency;

10.3.16.2 They shall have a permanent pool of water and provide for 24 hour detention of the first inch of stormwater runoff from the entire upstream watershed; and

10.3.16.3 All other necessary approvals have been obtained that could be cause for site rejection.

10.3.17 The pre-development peak discharge rate shall be computed assuming that all land uses in the site to be developed are in good hydrologic condition.

8 DE Reg. 1172 (2/01/05)

* **Please Note: As the rest of the sections were not amended they are not being published.**

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

2600 Delaware Examining Board of Physical Therapists and Athletic Trainers
Statutory Authority: 24 Delaware Code, Section 2604(a)(1) (24 Del.C. §2604(a)(1))
24 DE Admin. Code 2600

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 12, 2006 at a scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers to receive comments regarding the proposed changes its rules and regulations to allow for online renewal of licenses and online attestation of completion of continuing education units. The proposed changes also revise the Mandatory Continuing Education Unit ("CEU") deadline and the license renewal deadline to correspond, so that CEU's must be completed before January 31 of any odd numbered year, the same date that licenses are renewed. Furthermore, the proposed revisions allow for flexibility in changing Board-approved independent agencies that may evaluate the credentials of foreign trained applicants by removing the names and addresses of those agencies from the regulations. Finally, the proposed changes revise Regulation 11.0 to correct a typographical error and to clarify that any applicant previously licensed in the State of Delaware who has allowed his or her license to lapse must complete 3.0 required CEU's to again obtain a Delaware license. The proposed changes to the Board's rules and regulations 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. §2604(a)(1).

Summary of the Evidence and Information Submitted

No written comments were received. No public comment was received at the September 12, 2006 hearing.

Findings of Fact with respect to the Evidence and Information Submitted

At the hearing, the Board determined to change the wording of the proposed amendment to Regulation 7.1. The Board replaced the clause "to the new timeframe", found in the last sentence of the proposed Regulation 7.1 with the word "period." The sentence now reads, "In the transition period . . ." The Board finds that this is not a substantive change. No other changes to the proposed rules and regulations were made at the hearing.

The Board carefully reviewed and considered the proposed changes to its rules and regulations. The Board found that the proposed changes ease the administrative burden of the Board and the Division of Professional Regulation. The change from a pre-renewal audit to one taking place post-renewal is in the public interest in that licensees will not be prohibited from practicing because they have failed to meet the continuing education deadline, and therefore had not met the requirements to renew their licenses. The change permits licensees to continue providing professional services to the public while the Board conducts its license renewal audits. Under the new rules, the Board will continue to conduct random audits of licensees seeking renewal, and it will address continuing education deficiencies as appropriate under the circumstances of each individual case. The proposed changes benefit those licensed by the Board, because licensees are able to renew their licenses online twenty-four hours per day, are no longer required to submit continuing education logs, which can be a time-consuming. Licensees must continue to keep records of their continuing education credits; however, because they will need to submit this information if they are audited by the Board.

The Board finds that its decision to change the continuing education deadline to correspond with the license renewal deadline also benefits the public, the Board and licensees. Prior to the rule change, a licensee completing a continuing education course during the two months between the CEU deadline and the license renewal deadline could not count those CEU's toward the CEU's needed for that license renewal period. This eliminated one benefit of undertaking continuing education during that time period. The Board also finds the new rule beneficial because by having these two periods correspond has the result that CEU credits used to renew a license are never more than two years old. In addition, the new deadline, which is concurrent with the biennial

license renewal period, also lessens confusion and eases administration for both the Board and licensees because both license renewal and CEU credits are due at the same time.

The Board has decided to remove the identifying information, including names and addresses, of Board-approved independent agencies that may evaluate the credentials of foreign-trained applicants from its rules and regulations. The Board finds that removing this information from the regulations is in the public's interest because it eases the Board's administrative burden. This change provides flexibility, allowing the Board to add or remove agencies to or from the list, and make other changes, such as to corporate names and addresses, without going through the rulemaking process. In addition, the Board finds that this change will not affect the availability of this information, because a list of these approved independent agencies will be available on the Board's website and from the Board's office at the Division of Professional Regulation.

In addition, the Board finds that the clarification in Regulation 11.0 avoids the implication that a former licensee whose license has lapsed for over five years does not need to obtain the three CEU's that would otherwise be required if, for example, that same applicant sought licensure by reciprocity based on a current license in another jurisdiction. The change clarifies that all applicants who have been previously licensed in Delaware, but have allowed their license to lapse, must obtain 3.0 CEU's to again obtain a Delaware license, including those licensed by reciprocity and otherwise. This change is important to protect the public because it clarifies that all applicants must have the requisite amount of recent experience in their field.

Finally, the correction of the typographical error in Regulation 11.0 was necessary as it clarified the meaning of that Regulation.

In summary, the Board finds that adopting the changes to its rules and regulations as proposed are in the best interest of the citizens of the State of Delaware and are necessary to protect the health and safety of the general public, particularly the recipients of physical therapy and athletic training services.

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 rule remains as published in *Register of Regulations*, Vol. 10, Issue 2, August 1, 2006, except as noted above, as attached hereto as Exhibit A.

SO ORDERED this 12th day of September, 2006.

EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Gary T. Nowell, President, Professional Member
Patrick McKenzie, Vice-President, Professional Member
John J. Smith, Professional Member
Sharon Harris, Public Member
Steven Kotrch, Public Member
Ruth Ann Messick, Public Member
Kristen Whiteman, Professional Member

2600 Examining Board of Physical Therapists

(Break in Continuity of Sections)

6.0 Qualifications of Applicant (24 Del.C. §2606)

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational

program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 **Del.C.** §2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.

6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, ~~evidence-attestation~~ of continuing education courses as provided required by ~~Section, Rule 7.0.~~

7.0 Mandatory Continuing Education Units (CEU's) (24 Del.C. §2607(a))

7.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. ~~Beginning in 2006, the Continuing Education Unit Activity Record (CEUAR) credits required CEU's shall be received at the Division of Professional Regulation, Dover, Delaware, completed no later than November 30th January 31 of every even-odd-numbered year and every 2 years after such date. In the transition [to the new timeframe period], CEU's earned between December 1, 2006 and January 31, 2007 may be used for credit for the licensing period ending January 31, 2007 or for the licensing period ending January 31, 2009, but not both.~~

7.1.1 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU).

7.2 Individuals shall maintain the following items in order to receive credit for CEU's:

7.2.1 name of applicant seeking renewal

7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)

7.2.3 license number of applicant

7.2.4 proof of attendance at CEU course

7.2.5 date of CEU course

7.2.6 instructor(s) of CEU course

7.2.7 sponsor of CEU course

7.2.8 title of CEU course

7.2.9 number of hours of CEU course

7.3 ~~Continuing Education Regulations, (24 Del.C. §2607(a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.~~

7.3.1 ~~For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30th of each even year. CEU's completed before November 30th of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements~~

~~shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:~~

~~Odd Numbered Year — Even Numbered Year~~

~~1/1 — 6/30 — 2.5 CEUs — 1/1 — 6/30 — 1.5 CEUs~~

~~7/1 — 12/31 — 2.0 CEUs — 7/1 — 12/31 — .5 CEUs~~

~~7.1.2 CEU's shall not be carried over from one biennial period to the next.~~

~~7.1.3 CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:~~

~~7.1.3.1 If an applicant is granted a license during the first six months of a license period, between the dates of February 1 of an odd-numbered year and July 31 of that year, the new licensee must complete 2.5 CEUs.~~

~~7.1.3.2 If an applicant is granted a license during the second six months of a license period, between the dates of August 1 of an odd-numbered year and January 31 of an even-numbered year, the licensee must complete 2.0 CEUs.~~

~~7.1.3.3 If an applicant is granted a license during the third period of six months during a license period, between the dates of February 1 of an even-numbered year and July 31 of an even-numbered year, the licensee must complete 1.5 CEUs.~~

~~7.1.3.4 If an applicant is granted a license during the last period of six months during a license period, between the dates of August 1 of an even-numbered year and January 31 of an odd-numbered year, the licensee must complete .5 CEUs.~~

~~7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists.~~

~~7.2.1 Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's.~~

~~7.2.2 Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.~~

~~7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. The CEUAR is due November 30th of the even year. All questionable CEUAR's will be re-evaluated.~~

~~7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.~~

~~7.3.5 2.3 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 30th January 31st of the end of the respective CEU term.~~

~~7.3.6 2.4 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable~~

direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

7.3.7.2.5 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

7.3.7.4.2.5.1 professional meetings including national, state, chapter, and state board meetings

7.3.7.2.2.5.2 seminars/workshops

7.3.7.3.2.5.3 staff/faculty in-services

7.3.7.4.2.5.4 first time presentation of professionally oriented course/lecture (0.3 CEU/

hour per presentation)

7.3.7.5.2.5.5 approved self studies including:

- videotapes, if:

- there is a sponsoring agency

- there is a facilitator or program official present

- the program official is not the only attendee

- correspondence course, if a sponsoring agency provides a certificate of

completion

7.3.8.2.6 The following are also examples of acceptable continuing education in the amount of CEU's shown.

7.3.8.4.2.6.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

7.3.8.2.2.6.2 passing of licensing examination (1.5 CEU's)

7.3.8.3.2.6.3 original publication in peer reviewed publication (0.3 CEU)

7.3.8.4.2.6.4 original publication in non-peer reviewed publication (0.1 CEU)

7.3.8.5.2.6.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

7.3.8.6.2.6.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution during an internship (40 contact hours = 0.1 CEU)

7.3.8.7.2.6.7 acting as the direct clinical instructor providing supervision to an Athletic Training student officially enrolled in an accredited Athletic Training Education Program (40 contact hours = 0.1 CEU).

7.3 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 7.0.

7.3.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

7.3.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 7.4.

7.4 Random audits will be performed by the Board to ensure compliance with the CEU requirements.

7.4.1 The Board will notify licensees within sixty (60) days after January 31 that they have been selected for audit.

7.4.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

7.4.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CEU requirements in Section 7.2, which may include, but is not limited to, the following information:

7.4.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance:

7.4.3.2 Date of CEU course:

- 7.4.3.3 Instructor of CEU course:
7.4.3.4 Sponsor of CEU course:
7.4.3.5 Title of CEU course; and
7.4.3.6 Number of hours of CEU course.

8 DE Reg. 1591 (5/1/05)

(Break in Continuity of Sections)

10.0 Foreign Trained Applicant for Licensure (24 Del.C. §2606 (b))

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of four independent agencies an agency approved by the Board.

:
~~International Educational Research Foundation, Inc.
 P.O. Box 3665
 Culver City, CA 90234
 (Address change 2/1/04)~~

~~International Consultants of Delaware, Inc.
 109 Barksdale Professional Center
 Newark, DE 19711~~

~~Educational Credential Evaluators, Inc.
 P.O. Box 92970
 Milwaukee, WI 53202-0970~~

~~Foreign Credentialing Commission for Physical
 Therapists
 P.O. Box 25827
 Alexandria VA 22313-9998~~

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

11.0 Reactivation and Reinstatement (24 Del.C. §2607)

11.1 Any person who has been registered in the State and is not actively engaged in the practice of physical therapy or athletic training in the State may, upon request, be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 The Physical Therapist or Physical Therapist Assistant working in a clinical setting shall work under the direct supervision of a Physical Therapist in Delaware for a minimum of six months.

11.1.2.2 The Athletic Trainer shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application and provide proof of completion of 3.0 ~~DEU's~~ CEU's when reapplying under the provisions which govern reciprocity.

5 DE Reg. 2101 (5/1/02)

6 DE Reg. 189 (8/1/02)

8 DE Reg. 1591 (5/1/05)

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Examining Board of Physical Therapists is available at: <http://dpr.delaware.gov/boards/physicaltherapy/index.shtml>**

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY**Delaware Department Of Education Hearing Procedures and Rules****Ruling Making Authority****October 11, 2006**

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure in hearings before the Secretary or his/her designee where a statute or regulation provides the right to a hearing before the Secretary to decide a specific controversy or dispute.¹ It should be noted that the Department is not subject to Subchapter III (Case Decisions) or Subchapter IV (Licenses) of the Administrative Procedures Act. See 29 **Del.C.** § 10161(b)

1.0 Scope and Purpose of Rules

The Department of Education ("the Department") is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to hold hearings related to the denial or revocation of licenses, certificates, Department approvals and regulation waiver requests.

2.0 General Provisions

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Secretary's statutory responsibilities.

2.2 The Secretary or his/her designee may, for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 The Secretary may designate a representative to act as a hearing officer for any hearing before the Secretary. Except as otherwise specifically provided, the duties imposed, and the authority provided to the Secretary by these Rules shall also extend to his/her designee.

2.4 Notwithstanding any part of these Rules to the contrary, the Secretary or his/her counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures and otherwise expedite the proceedings.

2.5 The Secretary may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.6 Any party to a proceeding before the Secretary may be represented by counsel. An attorney representing a party in a proceeding before the Secretary shall notify the Secretary of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear pro hac vice before the Secretary in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.7 The Secretary may continue, adjourn or postpone proceedings for good cause at the request of a party or on his/her own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the Secretary shall be submitted to the Secretary at least three (3) business days before the date scheduled for the proceeding. The Secretary shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.8 A copy of any document filed with or submitted to the Secretary or his/her hearing officer shall be provided to all other parties in the proceeding, or to their legal counsel.

2.9 For purposes of these Rules, unless otherwise specified, "day" shall mean a calendar day. "Business day" shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

3.0 Evidentiary Hearings

3.1 Petitions for Hearing

3.1.1 Unless otherwise provided by regulation or statute, a party may initiate a hearing on

1. These Rules expressly do not govern employment proceedings pursuant to 14 **Del.C.** §121(a)(4),(5) or (6).

matters within the Secretary's jurisdiction by mailing or delivering a petition for hearing to the Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the Secretary's authority to decide the matter. Petitions may be delivered to the Secretary by facsimile but not by other electronic means.

3.1.1.1 Hearings on proposed waivers of a state rule or regulation shall the procedures set forth in 14 **Del.C.** § 122(g).

3.1.2 The petition for hearing must be postmarked or delivered to the Secretary within thirty (30) days of the petitioning party's receipt that official action has been taken by an authorized person, organization, board or agency, unless a different time period is specified in the statute or regulation establishing the right to a hearing.

3.1.3 A copy of the petition for hearing shall be sent to all other parties to the proceeding at the time it is mailed or delivered to the Secretary. A copy of any other paper or document filed with the Secretary or his/her hearing officer shall be provided to all other parties to the proceeding at the same time it is mailed or delivered to the Secretary or his/her hearing officer. If the party is represented by legal counsel, delivery to legal counsel is sufficient.

3.1.4 The Secretary or his/her hearing officer, in their discretion, may direct the person, organization, board or agency taking official action to file a written response to a Petition for hearing.

3.1.5 The Petitioner shall be deemed to have consented to a closed hearing unless the party notifies the Secretary or his/her designee in writing that a public hearing is requested. Such notice must be delivered to the Secretary within five (5) days of the receipt of the notice scheduling the hearing.

3.1.6 Parties shall keep the Secretary or his/her designee informed of their current addresses and telephone numbers during the pendency of any proceedings.

3.2 Hearing Procedures

3.2.1 A hearing shall be held within 90 days of the date of the petition for hearing, unless a different time period is specified in the statute or regulation establishing the right to a hearing or unless the hearing is continued, adjourned or postponed for good cause or unless the parties mutually agree in writing to a different time period.

3.2.2 Notice of the hearing shall be given 20 days before the day it is to be held, unless a different time period is specified in the statute or regulation establishing the right to a hearing or the parties mutually agree.

3.2.3 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party, if any, may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.

3.2.4 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted at the discretion of the Secretary or his/her hearing officer.

3.2.5 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the Secretary or his/her hearing officer.

3.3 Evidence

3.3.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.

3.3.2 The Secretary or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.3.2.1 The Secretary, or his or her designee, may exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence.

3.3.2.2 The Secretary, or his or her designee, may limit unduly repetitive proof, rebuttal and cross examination.

3.3.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.3.4 Any document introduced into evidence at the hearing shall be marked by the Secretary or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties unless otherwise directed.

3.3.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to

the Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.3.6 A written list of witnesses a party intends to call during a hearing shall be delivered to the Secretary or his/her designee and to all other parties at least five (5) days prior to a hearing. The Secretary or his/her hearing officer, in their discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

3.3.7 Witnesses may be sequestered at the discretion of the Secretary or his/her hearing officer upon request of any party.

3.4 Creation of a Record before the Secretary

3.4.1 Any party may request the presence of a stenographic reporter on notice to the Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.4.2 If a stenographic reporter is not present at the hearing, the Secretary or his/her designee shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Secretary within three months of the conclusion of the hearing.

3.5 Burden of Proof and Standard of Review

3.5.1 The burden of proof in license, certification, or certificate of approval, or regulation waiver denial actions is on the applicant to show by a preponderance of the evidence that he or she, or the organization or institution, meets the requirements of the applicable laws and regulations relating to the issuance of a license, certificate or Department approval, or regulation waiver.

3.5.2 Unless otherwise provided for in regulation or statute, the burden of proof in license, certification or Department approval revocation or disciplinary actions is on the person, organization, board or agency taking official action to establish by clear and convincing evidence that the licensee, certificate holder or approved individual, organization or institution has failed to comply with the applicable laws and regulations relating to the retention of a license, certificate or Department approval.

3.6 Secretary's Decision

3.6.1 When the Secretary has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the Secretary which shall include:

3.6.1.1 A brief summary of the evidence and recommended findings of fact based upon the evidence;

3.6.1.2 Recommended conclusions of law; and

3.6.1.3 Recommended decision.

3.6.2 When a proposed order is submitted to the Secretary, a copy shall be delivered to each of the parties who shall have 20 days to submit in writing to the Secretary and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional information. When the parties consent to the hearing officer's recommendation, they shall so advise the Secretary.

3.6.3 The Secretary shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching his or her final decision. The Secretary's decision shall be incorporated in a final order, which shall be signed and mailed to the parties by certified mail.

3.6.3.1 The Secretary may, at his or her discretion, take additional evidence.

3.6.4 The Secretary's decision shall be final unless a right of appeal is provided by statute.

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Technical Information Memorandum 2006-01 **An Act To Amend Title 30 Relating To Realty Transfer Tax Pertaining To Merger Transactions**

House Bill 330, with Amendment No. 2, is designed to close the "merger" exception established in a recent Delaware Supreme Court decision, pertaining to Realty Transfer Tax. House Bill 330 makes it clear that merger transactions and all kinds of indirect dealings in intangible property that are properly characterized as a sale of real property under §5401(7) are intended to be taxed under the Realty Transfer Tax.

The Amendment makes technical corrections to House Bill No. 330 and codifies existing practice with respect to the treatment of publicly traded limited liability company membership interest. Because House Bill No. 330 is clearly intended to be liberally construed to effectuate its remedial purpose of limiting avoidance of realty transfer tax through dealings in intangible interests, this Amendment also strikes seemingly unnecessary language.

The Amendment also ensures that formally written and executed merger agreements occurring before the date of enactment will be grandfathered under current law.

Finally, this Amendment also clarifies that merger transactions governed by House Bill No. 330 include only those that involve the beneficial transfer of real estate in Delaware.

This Amendment is effective for all agreements to merge and other indirect dealings in intangible interests subject to formal written agreements entered into on or after 1:30 pm on January 26, 2006.

Technical Information Memorandum 2006-03

Date: September 15, 2006
Subject: 1099 Electronic/Magnetic Filing

The Delaware Division of Revenue has previously issued memoranda on the subject of magnetic media reporting of 1099 information. The purpose of this memorandum is to advise you of new statutory and technical requirements for electronic/magnetic media filing and the penalties for not following these requirements. This Technical Information Memorandum is effective for the reporting of 1099 information for tax year 2006 and later.

In General

All Internal Revenue Service Forms 1099 reflecting Delaware taxable income must be filed with the Division of Revenue. As explained below, electronic/magnetic filing may be required for Form 1099-MISC and 1099-R. When electronic/magnetic filing is not required, paper forms may be used, but electronic/magnetic reporting is encouraged.

Electronic/magnetic reporting includes magnetic media or online submission via the internet.

Electronic/Magnetic Filing Requirement

Under § 513(a), Title 30 of the **Delaware Code**, any individual or firm required to report Form 1099-MISC or 1099-R information to the Internal Revenue Service electronically must also report to the Delaware Division of Revenue electronically. The duty to report 1099-MISC information to the Division of Revenue applies in the case of Forms 1099-MISC issued to persons resident in Delaware or to non-residents of Delaware for work performed within Delaware. Forms 1099-R are required to be reported to Delaware in the case of any person issued a Form 1099-R on which Delaware taxes are reported as withheld. Even though Delaware participates in the Combined Federal/State Filing Program, the 1099-MISC and 1099-R forms are required to be filed directly with Delaware. Any individual or firm not required to report Form 1099-MISC or 1099-R information to the Internal Revenue Service electronically are encouraged to report to the Delaware Division of Revenue electronically or on magnetic media, but must at least report by means of paper filings.

Media and data format specifications

1099 data submitted to the Delaware Division of Revenue must conform to the current version of the Internal Revenue Service's Publication 1220 specification for media and data format, except as noted below. As of

the date of this memorandum, that specification was available online as <http://www.irs.gov/formspubs/index.html>. This address is subject to change.

Exceptions to the Publication 1220 specifications for media and data format:

1. The Delaware Division of Revenue will accept 3 ½ inch diskettes, tape reels, and 3480/3480E/3490/3490E tape cartridges. In addition, CD-ROMs (readable on a standard Windows PC) will be accepted.
2. Compressed or encrypted data files on media of any type will not be processed. Online Internet submissions will allow for both compressed and secure encrypted transmission of data.
3. Multiple-volume files, or multiple files on a single volume, are not supported on media of any type. Each individual piece of media submitted must contain one, and only one, valid 1099 data file and no additional files should be included on the media.

Labels

All media should have external labels with the following information:

- "TY__DE 1099 DATA" (fill in the blank with the tax year)
- Submitter (company) name
- Contact name and mailing address
- Contact phone number
- Contact e-mail address (if available)
- Inventory number (your tape number or other volume identifier, if available)

Filing

The media described in the Technical Information Memorandum accompanied by IRS form 4804 (as described in Publication 1220) or equivalent, should be addressed to the State of Delaware, Division of Revenue, 820 North French Street, Wilmington, DE 19801.

Electronic filing is done using the Division of Revenue Internet website. As of the date of this memorandum, the location is <http://www.state.de.us/revenue> and then looking at Services for Business Taxpayers. This address is subject to change.

The due date for electronic/magnetic filing of 1099 information is March 1. The due date may be extended by request to the Director of Revenue showing that, unless extended, electronic/magnetic filing will represent an undue hardship to the reporting entity.

Penalty

Under §534(f), Title 30 of the **Delaware Code**, penalty may be assessed for (1) failure to file information returns electronically/magnetically by the prescribed due date, (2) failure to include all the information required to be shown on the return, (3) failure to file information returns in the required manner, or (4) failure to provide correct information. The penalty equals one-half the amount specified in Section 6721 of Internal Revenue Code for such failure in the case of the federal requirement. The maximum penalty for failure to meet the requirements set forth in this Memorandum is \$125,000.

Testing

The Delaware Division of Revenue does not have facilities for processing test 1099 data.

References:

- Title 30 **Delaware Code** Section 1154(h)
- Title 30 **Delaware Code** Section 534(f)
- Internal Revenue Code Section 6721
- Internal Revenue Service Regulation Section 301.6721-1

Contacts

If you have questions concerning 1099 reporting requirements, please contact James Stewart at (302) 577-8170.

If you have questions concerning media or data format specifications, please contact David Smith at david.g.smith@state.de.us or (302) 323-5300 extension 3027.

Patrick Carter, Director of Revenue

Technical Information Memorandum 2006-04

Date: September 15, 2006
Subject: W-2 Electronic/Magnetic Filing

The Delaware Division of Revenue has previously issued memoranda on the subject of magnetic media reporting of W-2 information. The purpose of this memorandum is to advise you of new statutory and technical requirements for electronic/magnetic media filing and the penalties for not following these requirements. This Technical Information Memorandum is effective for the reporting of W-2 information for tax year 2006 and later.

Electronic/Magnetic Filing Requirement

Under § 513(a), Title 30 of the **Delaware Code**, all employers making annual reports of Delaware income taxes withheld at source (Form W-2) must make such reports electronically provided they are required to file their Federal Form W-2 report electronically with the Social Security Administration. However, employers not required to file their Federal Form W-2 report electronically with the Social Security Administration are encouraged to report to the Delaware Division of Revenue electronically or on magnetic media, but must at least report by means of paper filings.

Media and data format specifications

W-2 data submitted to the Delaware Division of Revenue must conform to the current version of the Social Security Administration's MMREF-1 specifications for media and data format, except as noted below. As of the date of this memorandum, that specification was available online at <http://www.ssa.gov/employer/pub>; if a more current specification exists it should be used. Data submitted in the TIB-4 format will be rejected.

Exceptions to the MMREF-1 specifications for media and data format:

1. Data can be submitted on CD-ROM (readable on a standard Windows PC), in addition, the Division of Revenue will accept 3 ½ inch diskettes, tape reels and cartridges.
2. Compressed or encrypted data files on media of any type will not be processed. Online Internet submissions will allow for both compressed and secure encrypted transmission of data.
3. Multiple-volume files, or multiple files on a single volume, are not supported on media of any type. Each volume submitted must contain one, and only one, valid MMREF-1 data file (including RA, RE, RS, and RF records). No additional files should be included on any media, just a single MMREF-1 data file.
4. RW and RT records are optional. (RW, RO, RT, and RU records will be ignored if present.)
5. RS records are required for all employees with Delaware withholding, and must include

the following:

- Social Security Number
- Name and address
- City, state and zip code
- Delaware wages and withholding
- Numeric state code ("10" for Delaware)

Other fields in the state record may be left blank or zero-filled. Only employers with Delaware wages or withholding should be reported. (RA, RE, RS, and RF records are required).

6. The RF record serves only as an end-of-file marker; the data fields in the RF record are ignored. The RF record should be a full 512 bytes long.
7. An employer's Delaware ID number is the same as its Federal employer ID.

Labels

All media should have external labels with the following information:

- "TY__DE W-2 DATA" (fill in the blank with the tax year)
- Submitter (company) name
- Contact name and mailing address
- Contact phone number
- Contact e-mail address (if available)
- Inventory number (your tape number or other volume identifier, if available)

GENERAL NOTICES

Filing

The media described in the Technical Information Memorandum accompanied by Delaware Form W-3 (Reconciliation of Delaware Income Tax Withheld) or Form W-3A/W-2 (Transmittal of Delaware Income Tax Withheld), should be addressed to the State of Delaware, Division of Revenue, 820 North French Street, Wilmington, DE 19801. As of the date of this memorandum, the location of these forms is http://www.state.de.us/revenue/services/Business_Tax/Forms.shtml. This address is subject to change.

Electronic filing is done using the Division of Revenue Internet website. As of the date of this memorandum, the location is <http://www.state.de.us/revenue> and then looking at Services for Business Taxpayers. This address is subject to change.

The due date for electronic/magnetic filing is March 1. The due date may be extended by request to the Director of Revenue showing that, unless extended, electronic/magnetic filing will represent an undue hardship to the reporting entity.

Penalty

Under §534(f), Title 30 of the **Delaware Code**, failure to file information returns electronically or on magnetic media by the prescribed due date, failure to include all the information required to be shown on the return or failure to provide correct information, can result in assessment of a penalty of one-half the amount specified in the Internal Revenue Code for such failure in the case of federal returns. The maximum penalty for failure to meet the requirements set forth in this Memorandum is \$125,000.

Testing

The Delaware Division of Revenue does not have facilities for processing test W-2 data submitted on magnetic media. The Social Security Administration provides software which will read MMREF-1 data files and identify some problems; see <http://www.ssa.gov/employer/accuwage/index.html>. This address is subject to change.

The online system for internet filing will allow you to submit files for testing prior to the actual submission for filing. Results of the test will be sent via email.

Corrections and Replacements

Corrections via MMREF-2 are not supported. A full replacement of a W-2 submission can be accepted; contact David Smith (contact information below) for instructions.

Contacts

If you have questions concerning withholding filing requirements, please contact the Public Service Section at (302) 577-8200.

If you have questions concerning media or data format specifications, please contact David Smith at david.g.smith@state.de.us or (302) 323-5300 extension 3027.

Patrick Carter, Director of Revenue

DEPARTMENT OF INSURANCE

FORMS AND RATES BULLETIN NO. 11

TO: ALL INSURERS PROVIDING AUTOMOBILE INSURANCE COVERAGE IN DELAWARE
RE: COMPLIANCE GUIDANCE RELATING TO REGULATION 610
DATED: August 23, 2006

As you may know, I recently finalized Regulation 610, requiring all private passenger auto market companies with more than .01 percent of market share in Delaware to complete a rate survey for online publication. The first annual survey is due to the Department by November 1, 2006.

The regulation will not be official until it is published in the September *Register of Regulations* and the regulation does not require the survey materials to be provided to companies until September 15, 2006. However, the Department is beginning to make the survey materials available now and will continue over the coming weeks as they are completed. This will give companies a chance to get a head start on the survey, given the amount of information being requested.

A new webpage is located at www.state.de.us/inscom/survey and is also available via a link labeled "For Companies: Rate Survey Information" on the Department's home page at www.delawareinsurance.gov. It contains a brief overview of the survey process as well as links to documents needed to complete the survey.

A document describing the hypothetical consumer profiles and zip codes to be used in the survey is posted already, as well as a list of which companies must complete the full and the limited versions of the survey based on 2005 market share. The actual preformatted Microsoft Excel spreadsheet that must be completed and submitted to the Department will be posted to this page soon. And login and password information for an online account companies must use to provide company information and to upload the Excel spreadsheet will be transmitted to companies by September 15. We urge you to check this page periodically over the coming weeks for updates.

Any questions, comments or requests for clarification about the survey and submission process should be emailed to gregory.patterson@state.de.us.

This bulletin shall be effective immediately and shall expire on December 31, 2006. Thank you in advance for your work on this survey. We look forward to working with you to provide this valuable information to the insurance consumers of Delaware.

Matthew Denn
Insurance Commissioner

DEPARTMENT OF INSURANCE

FORMS AND RATES BULLETIN NO. 12

TO: ALL INSURERS PROVIDING AUTOMOBILE INSURANCE COVERAGE IN DELAWARE
RE: AVAILABILITY OF SURVEY MATERIALS RELATING TO REGULATION 610
DATED: September 15, 2006

As you know, auto companies with more than .01 percent of private auto market share in Delaware in 2005 are required to complete a 2006 auto insurance rate survey, as stipulated by Regulation 610. The deadline for surveys to be completed is November 1, 2006. As of today, all survey materials and instructions are available on the Department of Insurance website.

A document with instructions, assumptions and provisions for the survey, as well as detailed descriptions of vehicles and the hypothetical consumer profiles to be used in the survey, is available by going to www.delawareinsurance.gov and clicking on the link "For Companies: Rate Survey Instructions." The page also includes a list of companies that must complete the survey, divided into those that must complete the full survey and those that must only complete a limited version, based on 2005 Delaware market share.

To complete the survey, companies must:

1. Go to <http://compare.delawareinsurance.gov/company> and login to your company account. The login for each company is the company's NAIC number and the initial password is the NAIC number as well.
2. **Upon logging in for the first time, please follow the link on the left side of the page to change your company's password immediately.**
3. After changing your password, click the link to begin a new submission. Under "Insurance Type" select Auto and provide a name for your submission, such as "2006 Auto Rates." Your company will have the ability to create multiple survey submission files, with each new one that is uploaded replacing any previous one. For example, if you need to change this year's survey after you have already submitted it, you could create "2006 Auto Rates – Amended." Or, next year, you will create a new submission for the 2007 survey.
4. Fill in the fields in the "Customer Contact" section. This information will be publicly viewable by consumers on the website. You may (1) supply your company web address, a web address (if you choose) where

consumers can view your company's available auto discounts, a customer contact phone number and the email address that will receive consumer requests for quotes, per Regulation 610; or you may (2) check "Contact Local Agent," supply the email address that will receive consumer requests for quotes and, if you wish, supply a web address for a local agent locator or other appropriate web address.

5. Fill in the fields in the 'Data Contact' section. This information will not be publicly available on the website and will only be used by department personnel to contact the company about survey submissions.

6. Click Save to save the company information. You will be able to edit this information at any time.

7. Once you save the contact information, you will see a page with Submission Details. Initially, this page will show an error until survey rates are entered.

8. Under "Discounts," please use the link for Edit Discounts to check those discounts offered by your company. This list will be viewable by consumers on the website.

9. Under the section titled "Rates" is a link that will allow you to download the Microsoft Excel spreadsheet, which is strongly suggested as the means for submitting survey information. Once this spreadsheet is completed, log back in to your company account at a later date, select your submission name and upload the spreadsheet. (Alternately, companies may select each individual zip code under the "Rates" section of this page and manually enter the rate estimate for each of the 388 profiles. This is not the recommended option for submitting the information.)

10. If you wish, you may use the links at the left of the company information page to create and manage individual user accounts for your company staff, so that multiple staff members working on the survey may have access to the survey website. Or you may simply use the original company login and updated password for all your company's access.

11. Whenever you login to your company's account, you will see your submission listed under "Incomplete Submissions" until the survey spreadsheet is completed and uploaded. Once it is uploaded, it will show under the "Active Submissions" section and may be managed there.

Thank you in advance for your work on this survey, which we believe will be of great benefit to the consumers of Delaware. Any questions, comments or requests for clarification about the survey and submission process should be emailed to gregory.patterson@state.de.us.

This bulletin shall be effective immediately and shall expire on December 31, 2006. This bulletin supplements, but does not supersede, Auto Bulletin 11 dated August 23, 2006.

Matthew Denn
Insurance Commissioner

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60
(7 Del.C. Ch. 60)

REGISTER NOTICE

Secretary's Order No. 2006-A-0039

Approval and Certification of Delaware Reasonably Available Control Technology State Implementation Plan under the 8-Hour Ozone National Ambient Air Quality Standard

Date of Issuance: September 13, 2006

Effective Date: September 13, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental

Control ("Department") under 29 **Del.C.** §§8001 *et seq.*, and 7 **Del.C.** Chapter 60, the following findings and conclusions are entered as an Order of the Secretary:

Based upon the record reviewed in the Hearing Officer's Report ("Report"), prepared by Ron Amirikian, dated August 21, 2006, a copy of which is appended hereto and incorporated herein, I find and conclude that the record supports approval in final form of the proposed "Delaware Reasonably Available Control Technology State Implementation Plan Under the 8-Hour Ozone National Ambient Air Quality Standard" ("Plan"). The Department held a public hearing on August 1, 2006, in order to receive public comments on the Plan. This hearing was held pursuant to the Environment Protection Agency's ("EPA") procedural requirements, and 60 **Del.C.** §6010(c).

The Plan essentially is a report and certification on Delaware meeting the federal air quality regulations in its State Implementation Plan in order to attain compliance with the ozone National Ambient Air Quality Standard ("NAAQS"). Delaware's air quality currently does not meet the ozone NAAQS, and the EPA's regulations require Delaware, as a state within EPA's Philadelphia regional ozone non-attainment area, to require major stationary sources of Volatile Organic Compounds ("VOC") and nitrogen oxides ("NOx") emissions to be controlled by, at a minimum, by Reasonably Available Control Technologies ("RACT"). The Plan was prepared by experts within the Department's Air Quality Management Section, Division of Air and Waste Management in order to satisfy Delaware's responsibilities under the federal Clean Air Act, as amended.

The Hearing Officer's Report recommends approval of the Plan, which also certifies that all major stationary sources of VOC and NOX are controlled by at least VOC and NOx RACT. This Order hereby approves the proposed Plan as the final Plan and the certification in order that it may be submitted to EPA. The Plan demonstrates that Delaware has implemented RACT for VOC and NOx air contaminant emissions from major stationary sources. These air emission contaminants cause ozone, which, in turn, causes significant health problems for Delaware's citizens and visitors. Consequently, the Plan sets forth how the air quality in Delaware will be improved so that Delaware will meet the federal standard for ozone in the future. The Plan refers to Delaware Air Pollution Control Regulation No. 12 for NOx and Regulation No. 24 for VOC as the primary regulatory means to impose RACT on these two ozone causing air contaminants. The Plan also discusses the proposed regulation of other sources in proposed rulemakings, including lightering operations, which entails the transfer in Delaware Bay of oil from one larger vessel to another smaller vessel in order to allow the larger vessel to travel to the refineries along the Delaware Bay. The Plan reports that Department has a pending rulemaking to consider a adopting a regulation to regulate the VOC emitted from the oil lightering operations based upon the Department's experts' assessment that the one hour ozone NAAQS was not feasible at this time. This action should satisfy the EPA's comment on the progress on this source of air emission of VOC contaminants. In conclusion, this Order finds and directs that:

1. The proposed Plan, as published in the July 1, 2006, *Delaware Register of Regulations*, is adopted as the Department's final Plan and certification for EPA. The Department will undertake the necessary procedural steps to implement and publish this Order, including publication as a Notice in the *Delaware Register of Regulations* in the next available issue.

2. The Department provided adequate notice of the public hearing in a manner required by the applicable law and regulations, and the Department considered all public comments and has an adequate record for its decision, and no further public hearing is appropriate or necessary.

John A. Hughes
Secretary

*** Please note that no changes were made to the general notice as originally published in the July 2006 issue of the *Register* at page 163 (10 DE Reg. 163). Therefore, the final general notice is not being republished. Please refer to the July 2006 issue of the *Register***

**DEPARTMENT OF AGRICULTURE
NUTRIENT MANAGEMENT****NOTICE OF ADDED PUBLIC HEARING AND EXTENDED PUBLIC COMMENT PERIOD**

Comments on the proposed changes will be accepted from September 1, 2006 until October 27, 2006. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: William Rohrer. Hearings for the proposed regulations will be conducted at the Delaware Department of Agriculture on September 26, 2006 at 6:00 PM and at the Gumboro Fire Company hall on September 28, 2006 at 6:00 PM. An additional public hearing will be held at the Delaware Department of Agriculture on October 27, 2006 at 1:00 p.m. A meeting to accept the proposed changes was held at the Nutrient Management Full Commission meeting on August 8, 2006 at 7:00 PM. The accepted changes are indicated below.

Nutrient Management Certification Regulation Amendments certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulation addresses application timing and placement for commercial inorganic fertilizer and organic fertilizer.

Mandate Amendment The proposed regulation requires nutrient handlers and animal operations to develop and implement nutrient management practices as required by the Nutrient Management Law (3 **Del.C.** §2201 et. al.) by January 1, 2007.

Amendments: Paragraphs 6.0 – 14.0, reference 1200 Nutrient Management, 1201 Nutrient Management Certification Regulations.; Paragraph 4.0, reference Nutrient Management, 1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, October 19, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE****FOOD STAMP PROGRAM
Household Definition**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the definition of household.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by October 31, 2006.

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Temporary Assistance For Needy Families (TANF) Program Work Verification Plan

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.

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>.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

NOTICE OF PUBLIC HEARING

The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management Board adopted a compliance requirement at the August 2005 meeting stipulating that all states in the management regime (Massachusetts through North Carolina) for Black Sea Bass include language in their regulations, by January 1, 2007, that require at least two escape vents in the parlor section of all fish pots used to harvest Black Sea Bass. In addition, the Board stipulated that all circular vents used in fish pots must be at least 2.5 inches in diameter to allow escapement of sub-legal size fish. The Mid Atlantic Fishery Management Council and the ASMFC sponsored a workshop on March 22, 2005 to generate discussion and recommendations on whether the current vent sizes used are appropriate for scup and black sea bass pots and traps. Workshop participants recommended that circle vents increase in size to 2.5 inches and that rectangular and square vent sizes remain unchanged. They also recommended that each pot/trap have at least two escape vents in the parlor portion of the trap. In general the workshop group agreed that these changes would increase the escapement of sub-legal fish. The Board and Council adopted the workshop recommendations at the August 2005 meeting and in order to allow industry adequate time to make the proper gear changes the effective date was delayed until January 1, 2007. The Board specified that these gear changes would be compliance requirements that must be implemented through out the management regime (Massachusetts through North Carolina) for black sea bass by January 1, 2007.

Individuals may present their comments or request additional information by contacting the Fisheries Section, (302) 739-9914. A public hearing on these proposed amendments will be held on October 24, 2006 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway. Dover, DE 19901. The record will remain open for comments until 4:30 PM October 27, 2006.

DEPARTMENT OF STATE

Division of Professional Regulation

500 Board of Podiatry

NOTICE OF RESCHEDULED PUBLIC HEARING

The Delaware Board of Podiatry, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §506(a)(1), proposed amendments to its regulations 5.0 and 6.0 relating to In-Training licensure and online license renewal. 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 2 on August 1, 2006. However, notice was not published in two (2) Delaware newspapers of general circulation, as required by 29 **Del.C.** §10115, so the public hearing could not be conducted as originally scheduled for September 21, 2006. The public hearing has been

rescheduled for November 16, 2006.

A public hearing will be held on the proposed regulations on Thursday, November 16, 2006 at 5 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Board in care of Sherry Clark at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Sherry Clark at the above address or by calling (302) 744-4530.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION

**1400 Board of Electrical Examiners
NOTICE OF PUBLIC HEARING**

The Delaware Board of Electrical Examiners, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1406(a)(1), proposes changes to its Regulations 6.0, 7.0, and 8.0 relating to electricians' liability insurance. Specifically, the changes to **6.0 License and Insurance**, **7.0 Expiration and Renewal**, and **8.0 Continuing Education** would allow licensees to attest to maintenance of their required liability insurance during the renewal process. The Board also proposes to change **15.0 Inspection Agencies** to end the Division of professional Regulation's practice of mailing quarterly lists of licensed electricians to all licensed inspection agencies.

A public hearing will be held on the proposed regulations on Thursday, November 1, 2006 at 8:30 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 Judy Letterman 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 Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION

**4400 Delaware Manufactured Home Installation Board
PUBLIC NOTICE**

The Delaware Manufactured Home Installation Board, in accordance with 24 **Del.C.** §4416(b)(1) has proposed the rules and regulations to implement the Manufactured Home Installation Act, 24 **Del.C.** §4400. The rules were initially published for comment in the Delaware Register of Regulations on August 1, 2006. At the public hearing on September 11, 2006, and at its subsequent public meeting, the Board made substantive changes to the proposed regulations. The Board revised Regulation 1.0 License Required by adding one paragraph and revising the last two paragraphs. The Board also revised Regulation 3.0 License and Certificate Requirements by deleting the word "performance" from Regulation 3.1.4. A public hearing on the revised proposed rules and regulations will be held on Monday, November 13, 2006, at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Manufactured Home Installation Board, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

OFFICE OF THE STATE BANK COMMISSIONER NOTICE OF PUBLIC HEARING

The State Bank Commissioner proposes to adopt amended Regulations 1101, 1109 and 1113 and new Regulation 1114.

Copies of the proposed amended and new regulations are published in the *Delaware Register of Regulations*. Copies are also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and are available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed amended and new regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received at or before the public hearing scheduled for November 2, 2006.

A public hearing on the proposed amended and new regulations will be held in the Office of the State Bank Commissioner; 555 E. Loockerman Street; Suite 210; Dover, DE 19901 on November 2, 2006 commencing at 10:00 a.m.

PUBLIC SERVICE COMMISSION PUBLIC NOTICE

In PSC Order No. 5207 (Aug. 31, 1999), the Delaware Public Service Commission (the "Commission") adopted "Rules for Certification and Regulation of Electric Suppliers" (the "Rules").

As a result of an inquiry regarding the Rules from an electric supplier, by Order No. 6098 (Jan. 7, 2003), the Commission ordered the Commission Staff to undertake a review of the Rules and report back to the Commission regarding proposed amendments to the Rules. In order to assist Staff in preparing such a report, the Commission provided that electric suppliers, electric distribution companies, and other interested persons could submit proposed changes to the Rules for Staff's review prior to the submission of Staff's report to the Commission.

In compliance with Order No. 6098, Staff conducted several workshops to discuss proposed changes to the Rules. As a result of those workshops, and after consideration of all comments from the various interested parties, Staff produced a draft of the proposed amended Rules (the "Proposed Amended Rules") for the Commission's review and consideration, which were published (9 **DE. Reg.** 1529 (April 1, 2006)).

Written comments were received regarding the Proposed Amended Rules and a public hearing on the proposed amendments was held in May 2006. A Hearing Examiner's Report was issued on July 13, 2006 and in August 2006 the matter came before the Commission for consideration of the Hearing Examiner's Report and the Exceptions taken to it. As a result of the Commission's deliberations, certain revisions to the Proposed Amended Rules were made.

These revised Proposed Amended Rules will supersede the Rules proposed in April 2006. As with the earlier proposal, the revised Proposed Amended Rules set forth certain regulations and standards for electric suppliers allowed to compete with Delmarva Power & Light Company ("DP&L") for the supply of electric service in the State of Delaware. The revised Proposed Amended Rules also prescribe the available penalties for violations of the proposed regulations.

You may review the text of the revised Proposed Amended Rules in the October 2006 issue of the *Delaware Register of Regulations*.

You may obtain written copies of the revised Proposed Amended Rules at the Commission's office at the address set forth below. The cost is \$0.25 per page. You may also review an electronic copy of the revised Standards at the Commission's website at www.state.de.us/delpsc (open PSC Order No. 7023). The Commission has the authority to adopt such regulations under 26 **Del.C.** §§209, 1002, 1008, 1019.

Pursuant to 29 **Del.C.** §§1133, 10115, and 10118(c), the Commission now solicits comments, written suggestions, compilations of data, briefs, or other written materials concerning the revised final Standards. If you wish to submit such materials, you should file an original and ten copies at the following address:

Delaware Public Service Commission

861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware 19904
Attn: PSC Reg. Dckt. No. 49

You must file such materials on or before October 31, 2006.

In addition, pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10017, the Commission will conduct a public hearing on the revised Proposed Amended Rules during its regularly scheduled meeting on Tuesday, November 21, 2006. That meeting will begin at 1:00 PM in the Commission's Hearing Room at the above address. You can submit oral presentations or written materials at such hearing.

If you have questions, or desire further information about the matter, you can contact the Commission at 1-800-282-8574 or (302) 739-4333 (including text telephone). You can also send questions by Internet e-mail to david.bloom@state.de.us. If you are disabled and need assistance, please contact the Commission to arrange assistance.
