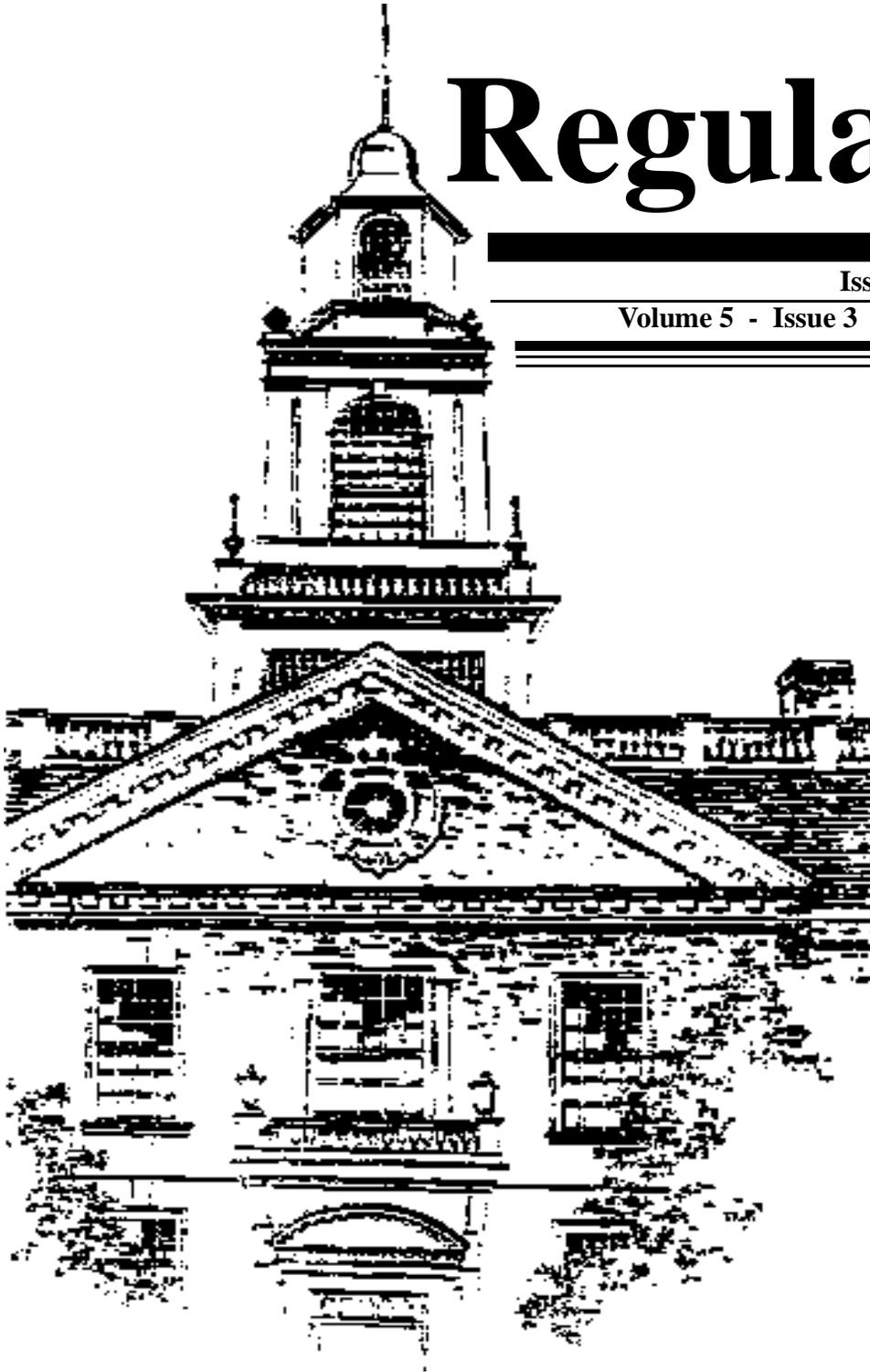


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# Delaware Register of Regulations



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Issue Date: September 1, 2001

Volume 5 - Issue 3

Pages 488 - 677

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Errata

Proposed

Final

Governor

Executive Order

Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before August 15, 2001.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

4 **DE Reg.** 769 - 775 (11/1/00)

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	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.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 6010, (7 Del.C. 6010)



**REGISTER NOTICE  
SAN# 2001-18**

\* PLEASE NOTE: THE PROPOSED OYSTER REGULATIONS THAT WERE PUBLISHED IN THE AUGUST 2001 REGISTER OF REGULATIONS WERE NOT COMPLETE. THE NEW REGULATIONS, S-63, S-65, S-67, S-69, S-71, S-73 AND S-75, WERE INADVERTENTLY NOT PUBLISHED. THE ENTIRE PROPOSAL IS REPUBLISHED BELOW.

**1. TITLE OF THE REGULATIONS:  
OYSTER REGULATIONS**

**2. BRIEF SYNOPSIS OF THE SUBJECT,  
SUBSTANCE AND ISSUES:**

SB 185 established the direct sale of oysters harvested from the State's natural oyster beds. New shellfish regulations are required to govern the seasons, locations for landing oysters, the type and amount of harvesting gear, the minimum size of oysters and an annual quota of oysters allowed to be harvested.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

These proposed regulations will remain in effect indefinitely.

**4. STATUTORY BASIS OR LEGAL AUTHORITY  
TO ACT:**

7 Del. C. §2106

**5. OTHER REGULATIONS THAT MAY BE  
AFFECTED BY THE PROPOSAL:**

Repeal Shellfish Regulation Nos. S-7, S-9, S-11, S-13 and S-37 as no longer needed.

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on proposed shellfish regulations is scheduled for August 23, 2001 at 7:30 PM in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comment until 4:30 PM on August 30, 2001. Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-3441.

**7. PREPARED BY:**

Charles A. Lesser, (302)739-3441, May 7, 2001

**S-7 NATURAL OYSTER BEDS - LOCATION**

(a) "Natural oyster beds" shall mean those shellfish grounds located to the North of the "East Line" in Delaware Bay and River and shellfish grounds located upstream of the entrances of all tributaries entering the Delaware River and Delaware Bay under the jurisdiction of the State.

(b) ~~The Department shall designate specific natural oyster beds that will be open for taking seed oysters on specific dates prior to April 1, in any given year.~~

~~**S-9 OYSTERS — PUBLIC TONGING AREAS —  
LOCATION**~~

~~(a) "Public tonging areas for oysters" shall mean those shellfish grounds located in th Delaware Bay approximately two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay and more specifically described as plotted on the Delaware Bay Chart No. 12304 22nd edition, published by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington D.C., November, 1975 with Loran C overprinted as follows:~~

~~**CORNER LOCATION LORAN READING**~~

<del>1. Northwest Corner</del>	<del>9930-Y-52260.91</del>
	<del>9930-Z-70042.54</del>
<del>2. Northeast Corner</del>	<del>9930-Y-52259.36</del>
	<del>9930-Z-70043.20</del>
<del>3. Southwest Corner</del>	<del>9930-Y-52262.10</del>
	<del>9930-Z-70043.80</del>
<del>4. Southeast Corner</del>	<del>9930-Y-52260.65</del>
	<del>9930-Z-70043.95</del>

~~**S-11 OYSTERS — PUBLIC TONGING AREAS —  
SEASON**~~

~~(a) It shall be unlawful for any person to harvest oysters from the public tonging area located in the Delaware Bay two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay at any time other than September 1 through April 30 next ensuing for each year.~~

~~**Note:** It is unlawful for any person to harvest oysters from any public tonging areas unless said person has a valid public oyster tongs license.~~

**~~S-13 OYSTERS DAILY TAKE LIMITS PUBLIC TONGING AREA~~**

~~It shall be unlawful for any person to take more than fifteen (15) bushels of oysters in any one (1) day from the oyster public tonging grounds.~~

**~~S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FROM NATURAL OYSTER BEDS~~**

~~(a) The owner of a vessel which was previously licensed in Delaware to harvest and/or transplant oysters from natural oysters beds or from leased shellfish ground in Delaware Bay may directly apply to the Department for a license for said vessel to harvest and/or transplant oysters from the natural oyster beds or from leased shellfish grounds within the jurisdiction of the State.~~

~~(b) The owner of a vessel which was not previously licensed to harvest oysters in Delaware and is to be used for transplanting oysters from natural oyster beds in Delaware Bay to leased shellfish grounds in Delaware Bay, must submit an application for said vessel license to the Department that will first be reviewed by the Council on Shellfisheries for their determination as to whether or not:~~

~~(1) The legal and equitable owner is a Delaware resident or a corporation whose principal place of business is located within Delaware prior to January 1, 1990 or a Delaware corporation incorporated after January 1, 1990 with its principle place of business in Delaware and whose legal and equitable owners are Delaware residents; and,~~

~~(2) the profits for the operation of said vessel will help to preserve and improve the Delaware shellfish industry; and,~~

~~(3) the vessel to be licensed will remain exclusively in Delaware's shellfish industries for a period of at least sixty (60) months.~~

~~Based upon these criteria, the Council on Shellfisheries shall then recommend approval or disapproval for issuing an oyster harvesting license for said vessel within ten (10) calendar days of receipt of the application provided that there is no regularly scheduled council meeting between the date of the application and the beginning of the oyster transfer season. The Department, upon receiving a recommendation from the Council on Shellfisheries, shall decide whether or not to issue an oyster harvesting license for the vessel for the forthcoming oyster transfer season.~~

~~(c) The owner of a vessel which was not previously licensed to harvest and/or transplant oysters in Delaware and said vessel is only to be used to harvest oysters from leased shellfish grounds may directly apply to the Department and receive a vessel license to harvest oysters from leased shellfish grounds within the jurisdiction of this State.~~

**~~S-63. OYSTER HARVESTNG SEASONS~~**

~~(a) It shall be unlawful for any person to harvest or to~~

attempt to harvest oysters from the State's natural oyster beds in the year 2001 except during the period beginning at sunrise on November 1, 2001 and ending at sunset on December 31, 2001.

(b) It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds, in any calendar year other than the year 2001, except during the period beginning at sunrise on April 1 or the Monday thereafter if April 1 is a Sunday, and ending at sunset on December 31 or the preceding Saturday if December 31 is a Sunday.

**S-65. OYSTER LANDING AREAS**

(a) It shall be unlawful for any person to land oysters taken for direct sale from the State's natural oyster beds at any site other than in the town of Leipsic, Port Mahon, Bowers Beach or the Cedar Creek State Boat Access facility.

(b) 'To Land' shall mean to bring to shore.

**S-67. OYSTER HARVESTING GEAR**

(a) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with any gear other than an oyster dredge that measures no more that 52 inches in length along the tooth bar.

(b) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with an oyster dredge with teeth measuring more than four (4) inches in length.

(c) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with more than two oyster dredges overboard at the same time.

(d) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with any dredge that is attached to another dredge.

**S-69. OYSTER MINIMUM SIZE LIMIT**

It shall be unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less that 2.75 inches between the two most distant points on the edges of said oyster's shell.

**S-71. OYSTER HARVESTING CONTROL DATES**

(a) The Department shall consider a person eligible to participate in the next annual harvest of oysters for direct sale from the State's natural oyster beds provided said person complies with the following criteria:

1. He/she has obtained a valid oyster harvesting license.

2. He/she has indicated in writing to the Department no later than 10 days prior to the opening date of the annual oyster harvesting season that he/she will

participate in said annual harvest of oysters.

3. He/she pays the annual oyster harvest fee of \$1.25 per bushel for his/her individual allotment of oysters on or before the opening date of said annual harvest of oysters.

(b) In the event a person who indicates in writing to the Department that he/she will participate in the next annual harvest of oysters from the State's natural oyster beds and then fails to pay their oyster harvest fee on or before the opening date of said annual harvest of oysters, said person share of oysters shall be pooled and made available for subsequent allocations to individuals who have paid their oyster harvest fees on time. The quantity subsequent allocation of oysters shall be determined by dividing the pooled allotments by the number of paid participants. Interested participants may obtain no more than one subsequent allocation by paying the oyster harvest fee of \$1.25 per bushel prior to harvesting same.

#### **S-73. OYSTER HARVESTING LICENSEE REQUIREMENTS**

(a) It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel.

#### **S-75. OYSTER HARVEST QUOTA**

The oyster harvest quota for 2001 is 24, 795 bushels.

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**Symbol Key**

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

**Proposed Regulations**

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

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**EXECUTIVE DEPARTMENT  
DELAWARE ECONOMIC DEVELOPMENT OFFICE**

Statutory Authority: 29 Delaware Code,  
Section 5005(11), (29 **Del.C.** §5005(11))

**THE DELAWARE ECONOMIC DEVELOPMENT  
AUTHORITY  
NOTICE OF PUBLIC HEARING ON PROPOSED  
AMENDMENTS TO REGULATION NO. 5 –  
PROCEDURES GOVERNING THE DELAWARE  
STRATEGIC FUND****TITLE OF REGULATION**

Regulation No. 5 Procedures Governing the Delaware Strategic Fund.

**NATURE OF PROCEEDINGS; SYNOPSIS OF THE  
SUBJECT AND SUBSTANCE OF THE PROPOSED  
REGULATION**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Director of the Delaware Economic Development Office, as Chairperson of The Delaware Economic Development Authority, is proposing to adopt an amendment to the existing regulation for the administration and operation of the Delaware Strategic Fund Program established in 29 **Del.C.** §§ 5027 through 5029, as amended, to reflect certain changes in the practices of The Delaware Economic Development Authority pertaining to the Delaware Strategic Fund Program and changes to the Brownfield Assistance program under that statute that are necessitated by the enactment into law of 73 Delaware Laws, c.183 (July 13, 2001). The

proposed amendments add certain new definitions in connection with the Brownfield Assistance Program, incorporate the interagency due diligence that the staff of the Delaware Economic Development Office performs into the description of the evaluation process for assistance, eliminate certain non-profit activities from the list of ineligible projects in certain programs, remove a limitation on the amount of assistance that can be rendered with respect to certain programs and conform the Brownfield Assistance Program terms to those in the recently enacted 29 **Del.C.** § 5028(c).

**STATUTORY BASIS AND LEGAL AUTHORITY TO  
ACT**

29 Delaware Code, §§ 5005(11), 5029(a).

**OTHER REGULATIONS AFFECTED**

None.

**NOTICE OF PUBLIC HEARING; HOW TO  
COMMENT ON THE PROPOSED REGULATION**

Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Lee K. Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271. The Director of the Delaware Economic Development Office, as the Chairperson of The Delaware Economic Development Authority, or an employee of the Delaware Economic Development Office designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on October 1, 2001 in the conference room of the offices of the

Delaware Economic Development Office on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Lee K. Porter at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before October 1, 2001.

## TEXT OF PROPOSED AMENDED REGULATION NO. 5 PROCEDURES GOVERNING THE DELAWARE STRATEGIC FUND

### 1.0 ENABLING LEGISLATION

1.1 Pursuant to 29 **Del.C.** §§ 5027-5029 (the "Act"), as amended, the Delaware Strategic Fund (the "Fund") was established. The Fund was created to assist the Delaware Economic Development Office (the "Office") through The Delaware Economic Development Authority (the "Authority") with efficiently administering financing programs as well as with developing new programs to retain, attract and expand Delaware employment. Section 5029(a) of the Act directs the Authority to draft rules and regulations pertaining to Fund eligibility. The following regulations (the "Regulations") have been adopted by the Authority pursuant to the foregoing provision of the Act. 29 Del.C. § 5005(11) also gives the Director of the Office general power to promulgate rules and regulations governing the Office.

### 2.0 PURPOSE

2.1 The purpose of these Regulations is to establish criteria for the administration of the Fund. The Regulations contain procedures governing the process for applying to the Authority for economic assistance under the Fund, pre-closing and post-closing procedures and criteria for the Authority's approval or disapproval of an application for economic assistance under the Fund.

### 3.0 DEFINITIONS

Unless otherwise indicated below, all capitalized terms used herein shall have the meaning ascribed to such terms in 29 **Del.C.** § 5052.

The terms defined in 1.0 of this Regulation shall have the meanings ascribed to such terms therein.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

**"Application"** means an application made to the Authority on such form or forms, together with all relevant attachments, as the Authority may, in its sole discretion, require in connection with administration of the Fund.

**"Applicant"** means any person, including individuals,

firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons for which a Project is undertaken or proposed to be undertaken.

**"Award"** shall have the meaning ascribed to such term in 18.0 hereof.

**"Brownfield"** means any vacant, abandoned or underutilized real property, the development or redevelopment of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated.

**"Brownfield Assistance"** shall have the meaning ascribed to such term in 19.0 hereof.

**"Certified Brownfield"** means a Brownfield that the Secretary of the Department of Natural Resources and Environmental Control has certified as a Brownfield pursuant to the regulations promulgated under 7 Del.C. §9104(b)(2)p.

**Chairman "Chairperson"** means the Chairman Chairperson of the Authority.

**"Council"** means the Council on Development Finance created by 29 **Del. C.** §5007.

**"Development Assistance"** shall have the meaning ascribed to such term in 15.0 hereof.

~~**"Director"** means the Director of the Delaware Economic Development Office.~~

**"Eligible Project"** shall have the meaning ascribed to such term in 19.0 hereof.

**"Final Approval"** means the final approval of an Application by the ~~Chairman~~ Chairperson.

**"Financial Assistance"** shall have the meaning ascribed to such term in 17.0 hereof.

**"GII Loan"** shall have the meaning ascribed to such term in 11.0 hereof.

**"Green Industries Initiative"** means the program created by the memorandum of understanding between the Delaware Development Office, predecessor in interest to the ~~Delaware Economic Development Office~~, and the Department of Natural Resources and Environmental Control dated December 2, 1991.

**"Loan"** shall have the meaning ascribed to such term in 10.0 hereof.

**"Participation"** shall have the meaning ascribed to such term in 9.0 hereof.

**"Program"** shall have the meaning ascribed to such term in 18.0 hereof.

**"Relocation Assistance"** shall have the meaning ascribed to such term in 16.0 hereof.

**"SBIR"** shall have the meaning ascribed to such term in 18.0 hereof.

### 4.0 FEES

4.1 Application Fees

4.1.1 A non-refundable fee of two hundred fifty dollars (\$250) shall accompany every Application before such Application shall be considered by the Authority. The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."

#### 4.2 Closing Fees

4.2.1 For loans or participations in any amount up to and including one hundred thousand dollars (\$100,000), a fee of one half percent (.5%) of the loaned amount shall be paid at closing.

4.2.2 For loans or participations excess of one hundred thousand dollars (\$100,000) up to and including two hundred twenty five thousand dollars (\$225,000), a fee of one percent (1%) of the loaned amount shall be paid at closing.

4.2.3 For loans or participations in excess of two hundred twenty five thousand dollars (\$225,000), a fee of one and one half percent (1.5%) of the loaned amount shall be paid at closing.

4.2.4 The Application fee shall be credited toward the closing fee required to be paid under 4.2. In no event shall the closing fee and the Application fee total less than two hundred fifty dollars (\$250).

#### 4.3 Post Closing Fees

4.3.1 Any fees or costs incurred by the Authority in connection with executing a document or granting a consent or waiver related to a Project after closing, including, without limitation, attorney fees, shall be paid by the Applicant.

4.3.2 Any fees or costs incurred by the Authority for modifying or restructuring payment terms for financial assistance after closing, shall be paid by the Applicant.

4.3.3 Closing documentation for all Projects shall contain the Applicant's covenant to pay the fees and costs described in 4.3.1 and 4.3.2.

#### 4.4 Waiver of Fees

4.4.1 The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all financial assistance granted by the Authority.

### 5.0 LOAN TERMS

#### 5.1 Interest Rate

5.1.1 The interest rate on a direct loan with a term up to and including one hundred twenty (120) months shall be sixty percent (60%) of the prime rate published in *The Wall Street Journal*.

5.1.2 The interest rate on a direct loan with a term of more than one hundred twenty (120) months shall be seventy percent (70%) of the prime rate published in *The Wall Street Journal*.

5.1.3 The interest rate on a participation loan with a term up to and including one hundred twenty (120) months shall be sixty percent (60%) of the participating bank's commercial rate.

5.1.4 The interest rate on a participation loan with a term of more than one hundred twenty (120) months shall be seventy percent (70%) of the participating bank's commercial rate.

#### 5.2 Maturity

5.2.1 Loans for which the proceeds are used for working capital purposes shall not have a maturity of greater than five (5) years.

5.2.2 Loans for which the proceeds are used for purposes other than working capital and the purchase or renovation of real estate shall not have a maturity of greater than ten (10) years.

5.2.3 Loans for which the proceeds are used to purchase or renovate real estate shall not have a maturity greater than twenty (20) years.

#### 5.3 Repayment

5.3.1 Loans will be amortized and repaid to the Authority on a monthly basis. Any amortization of Loan repayment other than monthly principal and interest shall be at the sole discretion of the Authority.

5.3.2 Participations will be amortized to mirror those of the financial institution from which the Participation was purchased.

### 6.0 APPLICATION PROCEDURE

6.1 Before submitting an Application, the Applicant should consult with the Authority to determine if the Project is eligible for consideration.

6.2 To apply for financial assistance, an Applicant must submit a completed Application concerning the Project to the Authority for review, together with the non-refundable Application fee. No application will be reviewed by the Authority until it is complete to the satisfaction of the Authority.

6.3 Applicants may obtain Application forms by contacting the Director of Financial Programs, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749.

### 7.0 EVALUATION PROCESS

7.1 When an Application is complete to the satisfaction of the Authority, the Authority will evaluate the Project, which evaluation may be based on the following:

7.1.1 Visitation to the Applicant's place of business, which may take place prior to the Application as a part of the meeting to determine eligibility.

7.1.2 Analysis of historical and projected financial statements and a comparison to industry peers.

7.1.3 An independent industry study (using source material such as RMA Annual Statement Studies), comparing the Applicant's projections to the study, and considering the short term and long term outlook for the industry.

7.1.4 Contact with the Applicant's customers to

ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timelines of delivery, length of the relationship, likelihood of the relationship being continued, and customer's opinions of the Applicant's management.

7.1.5 Contact with the Applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of Applicant's management.

7.1.6 Contact with the Applicant's bank(s) to ascertain credit history and obtain an opinion of the Applicant's management.

7.1.7 An analysis of collateral available to secure any requested financing as to adequacy of amount, quality, condition, and marketability.

7.1.8 Independent credit investigations of the Applicant and its principals, which may include judgment and lien searches.

7.1.9 Independent inquiries about the Applicant and its principals with other agencies of the State, other states, or the United States.

7.2 After completing the evaluation, a determination shall be made regarding the merits of the request, the adequacy of the collateral available to secure the requested financing, if applicable, and, if applicable, the likelihood of repayment.

7.3 If a positive determination is made, the requested financing will be presented to the ~~Chairman~~ Chairperson for preliminary approval.

## 8.0 APPROVAL PROCESS

8.1 The Authority shall use its reasonable best efforts to complete its review of the Application and to forward the Application to the ~~Chairman~~ Chairperson for preliminary approval or disapproval within sixty (60) days from the date it deems an Application complete.

8.2 Upon preliminary approval by the ~~Chairman~~ Chairperson, an Application shall be submitted to the Council for review, and the Council shall make a recommendation with respect to the Application.

8.3 If the ~~Chairman~~ Chairperson of the Authority determines that a Project has substantial economic development content, is in the public interest, and that the Authority's financial support would represent a prudent use of State funds, consistent with the Act, then the ~~Chairman~~ Chairperson may recommend financial assistance for such Project to the Council which exceeds any dollar limitations, conditions to, or restrictions on, assistance contained in these Regulations.

8.4 Upon recommendation by the Council, the Application shall be submitted to the ~~Chairman~~ Chairperson for consideration and final approval or disapproval.

8.5 Final Approval shall constitute official action on the

part of the Authority demonstrating its intent to adopt a resolution authorizing the issuance of the requested financial assistance. Final Approval will be binding on the Authority *provided, however*, that the Authority may withdraw Final Approval at any time prior to the ~~Closing Date~~ disbursement of financial assistance, if it determines that (1) the Applicant's circumstances have changed adversely since the date of Final Approval or since completion of the Application, if such adverse change did not come to the Authority's attention prior to Final Approval or (2) the Application contained a statement that was materially false or failed to include information necessary to prevent the Application from being materially false.

8.6 Final Approval will be effective for a period not to exceed one (1) year, and all funds committed for a Project must be completely dispersed by the Authority within that time. The Authority, in its sole discretion, may make limitations or grant extensions with respect to this one-year period.

8.7 The Applicant shall be issued a commitment letter outlining the terms and conditions of the Final Approval. When the commitment letter has been accepted by the Applicant and returned to the Authority together with any required fees, and all required documentation is prepared in form and content satisfactory to the Authority, a closing is scheduled and financial assistance is made available to the Applicant.

## 9.0 PARTICIPATION LOAN PROGRAM

### 9.1 Program Description

9.1.1 The Authority is empowered to purchase participations from financial institutions that are approved by the Authority (a "Participation"). A Participation shall be no more than thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its Participation in any Project to any amount less than thirty percent (30%).

9.1.2 The maximum amount of a Participation ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

9.1.3 Proceeds of Participations can be used for any Project, subject to **9.2.2** below.

9.1.4 The maximum term of a Participation shall be twenty (20) years and the minimum term shall be two (2) years. The actual term will be based on usage of the proceeds and will mirror the term of the underlying loan.

### 9.2 Eligibility Standards

9.2.1 To be eligible for a Participation, a Project should serve a public purpose by maintaining or expanding full-time employment in the State, maintaining or diversifying business and industry in the State, and/or maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the

Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.

9.2.2 The following projects do not qualify for a Participation:

9.2.2.1 Private speculative real estate ventures;  
9.2.2.2 Projects which do not attract or retain employment opportunities;

9.2.2.3 Restaurants and professional office buildings;

9.2.2.4 Refinancing of existing debt; and,

9.2.2.5 Funding projects located outside the State, ~~and~~

9.2.2.6 Private, non-profit activities except those which assist in the financing of medical facilities, nursing facilities for the residence care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State.

### 9.3 Project Approval Standards

9.3.1 Findings. - As a precondition to approving a Participation, the Authority shall make the findings and determinations required by 29 Del. C. §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

9.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to purchasing a Participation, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

9.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in **9.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Participation for a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

9.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time

jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its sole discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

9.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.

9.3.2 Collateral Provisions. - The Participation shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

9.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a Participation shall state that, if applicable, the participating financial institution will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral. The Authority shall be listed as loss payee, as its interests may appear, and the participating financial institution will provide evidence to the Authority that the Applicant maintains public liability insurance naming the Authority as an additional insured, as its interests may appear.

9.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a Participation, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 10.0 DIRECT LOAN PROGRAM

### 10.1 Program Description

10.1.1 The Authority is empowered to make direct loans to Applicants (a "Loan"). ~~The maximum amount of a Loan shall be thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its Loan in any Project to any amount less than thirty percent (30%).~~

10.1.2 The maximum amount of a Loan ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

10.1.3 Proceeds of a Loan can be used for, but are not limited to, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings. Proceeds can also be used to augment working capital.

10.1.4 The maximum term of a Loan shall be twenty (20) years and the minimum term shall be two (2) years. The actual term of the Loan will be based on usage of the proceeds.

### 10.2 Eligibility Standards

10.2.1 To be eligible for a Loan, a Project should serve a public purpose by maintaining or expanding employment in the State, by maintaining or diversifying business and industry in the State, and/or by maintaining or increasing its tax base. Also, the Applicant must be able to demonstrate to the satisfaction of the Authority that financial assistance from the State is necessary to effectuate the outcome of the Project.

10.2.2 The following projects do not qualify for a Loan:

10.2.2.1 Private speculative real estate ventures;

10.2.2.2 Projects which do not attract or retain employment opportunities;

10.2.2.3 Restaurants and professional office buildings;

10.2.2.4 Refinancing of existing debt; and,

10.2.2.5 Funding projects located outside the State, and

~~10.2.2.6 Private, non-profit activities except those which assist in the financing of medical facilities, nursing facilities for the residence care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State.~~

### 10.3 Project Approval Standards

10.3.1 Findings. - As a precondition to approving a Loan, the Authority shall make the findings and determinations required by 29 Del.C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

10.3.1.1 Employment Standard. - The

Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a Loan, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

10.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in **10.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a Loan in a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

10.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

~~10.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.~~

10.3.2 Collateral Provisions. - The Loan shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such

collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

10.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a Loan shall state that, if applicable, the Applicant will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, and public liability insurance policies with the Authority listed as an additional insured, as its interests may appear.

10.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## **11.0 GREEN INDUSTRIES LOAN PROGRAM**

### **11.1 Program Description**

11.1.1 The Authority is empowered to make loans to Applicants who have been approved for eligibility under the Green Industries Initiative (a "GII Loan"). The maximum amount of a GII Loan by the Authority shall be thirty percent (30%) of the eligible bank debt with respect to a Project. The Authority may, in its sole discretion, limit the amount of its GII Loan in any Project to any amount less than thirty percent (30%).

11.1.2 The maximum amount of a GII Loan ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

11.1.3 Proceeds of a GII Loan can be used for projects including, but not limited to, the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation of machinery, equipment, and buildings. Proceeds can also be used to augment working capital. Proceeds shall not be used for vehicles or other equipment that may be classified as "rolling stock."

11.1.4 The maximum term of a GII Loan shall be twenty (20) years and the minimum term shall be two (2) years. The actual term of the GII Loan will be based on usage of the proceeds.

11.1.5 GII Loans may also be made through Participations. The term of a GII Participation will mirror the underlying loan from the financial institution.

### **11.2 Eligibility Standards**

11.2.1 To be eligible for a GII Loan, a Project should serve a public purpose by demonstrating the reduction, abatement, or prevention of pollution of the state's environment or protecting its natural resources.

11.2.2 The following projects do not qualify for a GII Loan:

11.2.2.1 Projects for which the Applicant has not been approved for the Green Industries Initiative;

11.2.2.2 Projects which do not demonstrate the reduction, abatement, or prevention of pollution of the State's environment or the protection of its natural resources;

11.2.2.3 Refinancing of existing debt;

11.2.2.4 Speculative ventures;

11.2.2.5 Funding projects located outside the State; and

11.2.2.6 Private, non-profit activities.

### **11.3 Project Approval Standards**

11.3.1 Findings. - As a precondition to approving a GII Loan, the Authority shall make the findings and determinations required by 29 Del. C. §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

11.3.1.1 Pollution Control Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making a GII Loan, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing for the control, abatement, or prevention of land, water, or general environmental pollution within the State. The standards to be considered by the Authority will include, but not be limited to, the environmental situation in the State at the time of filing of the Application, the effect of the Project on the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

11.3.1.2 Abandonment Standard. - When applying the "Pollution Control Standard" set forth in **11.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove a GII Loan in a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

11.3.1.3 Capability Standard; Adherence to Law. In determining whether the Project will assist in the reduction, abatement, or prevention of pollution of the State's environment or whether it will protect the State's natural resources, the Applicant shall demonstrate to the

Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

11.3.1.4 Prior Lending Commitment. - Prior to Final Approval the Applicant must provide a written commitment from a bank or other recognized lending institution evidencing its commitment to lend to the Applicant the required portion of the bank debt necessary to complete the proposed Project.

11.3.2 Collateral Provisions. - The GII Loan shall be collateralized to the satisfaction of the Authority which shall use standard underwriting procedures to determine such collateralization. In the case of a privately held company, personal guarantees from active owners (whose ownership is 20% or greater) will normally be required.

11.3.3 Mandatory Provisions in Closing Documents. - The closing documents for a GII Loan shall state that, if applicable, the Applicant will provide evidence to the Authority that the Applicant maintains property insurance policies on any collateral with the Authority listed as loss payee, as its interests may appear, as well as public liability policies with the Authority listed as additional insured, as its interests may appear.

11.3.4 Post-Loan Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the funding of a GII Loan, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## 12.0 RESERVED FOR FUTURE USE.

## 13.0 RESERVED FOR FUTURE USE.

## 14.0 RESERVED FOR FUTURE USE.

## 15.0 DEVELOPMENT INCENTIVE ASSISTANCE

### 15.1 Program Description

15.1.1 The Authority is empowered to make financial assistance in the form of grants to Applicants ("Development Assistance"). ~~The maximum amount of Development Assistance by the Authority shall be thirty percent (30%) of the project costs with respect to a Project. The Authority may, in its sole discretion, limit the amount of Development Assistance in any Project to any amount less than thirty percent (30%).~~

15.1.2 The maximum amount of Development Assistance with respect to a Project ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

### 15.2 Eligibility Standards

15.2.1 To be eligible for Development Assistance, a Project should serve a public purpose by maintaining or expanding employment in the State, maintaining or diversifying business and industry in the State, and/or maintaining or increasing its tax base. Development Assistance may be used for the following activities: the acquisition of land, buildings, machinery and equipment, the expansion of an existing building, or the renovation or reconstruction of machinery, equipment, and buildings.

~~15.2.1.1 Renovation, construction, or any other type of improvements to roads, and utilities related to infrastructure; and~~

~~15.2.1.2 Assistance for land and building acquisition and development related to infrastructure.~~

15.2.2 The following projects do not qualify for Development Assistance:

15.2.2.1 Private speculative real estate ventures;

15.2.2.2 Projects which do not attract or retain employment opportunities;

15.2.2.3 Restaurants and professional office buildings;

15.2.2.4 Refinancing of existing debt; and

15.2.2.5 Funding projects located outside the

State, and

~~15.2.2.6 Private, non-profit activities except those which assist in the financing of medical facilities, nursing facilities for the residence care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State; and~~

~~15.2.2.7 Equipment other than that which is directly infrastructure related to the funded activity.~~

### 15.3 Project Approval Standards

15.3.1 Findings. - As a precondition to approving Development Assistance, the Authority shall make the findings and determinations required by 29 Del. C. § 5055 with respect to the Applicant and the Project. The Authority

shall apply the following standards, where applicable, in making such findings and determinations:

15.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Development Assistance, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

15.3.1.2 Abandonment Standard. - When applying the "employment standard" set forth in **15.3.1.1** above, the Authority shall take into consideration whether the Project will cause or result in unnecessary abandonment of an existing facility elsewhere in the State by the Applicant. The Authority, in its sole discretion, may disapprove Development Assistance for a Project involving relocation within the State if the relocation will result in a job loss and/or hardship for existing employees or abandonment.

15.3.1.3 Capability Standard; Adherence to Law. - In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

15.3.1.4 Business Standard. - In making findings and determinations with respect to the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a

Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Development Assistance will be available or expended on the date that the Authority provides such during a period of time commencing one (1) year prior to the date on which an application for Development Assistance is submitted to the Authority and terminating one year following the making of a grant with respect thereto. The Applicant must provide at least a One Hundred Thousand Dollar (\$100,000) capital investment in and/or secure at least One Hundred Thousand Dollars (\$100,000) of capital leases for buildings and/or equipment in the State. The term "capital investment" shall be applied in accordance with generally accepted accounting principles.

15.3.1.5 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with respect to the operators and principal users of the Project as are applied to the Applicants, unless there is good reason, established by the Applicant, to make the findings and determinations with respect to the Applicant alone. The financial strength of the Applicant and capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.

15.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Development Assistance granted under this section 15.

15.3.3 Post-Grant Period - Annual Reporting - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Development Assistance under the Program, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## **16.0 RELOCATION ASSISTANCE**

### **16.1 Program Description**

16.1.1 The Authority is empowered to provide financial assistance to businesses to offset some of the expenses associated with physically relocating personnel and/or equipment related to the establishment of their

Delaware operation ("Relocation Assistance"). ~~Relocation expenses will be based on a formula of up to a maximum of five thousand dollars (\$5,000) for each new full-time permanent Delaware job created.~~

16.1.2 The maximum amount of Relocation Assistance ordinarily shall be assistance with respect to a Project shall be five hundred-four hundred fifty thousand dollars ~~(\$500,000)~~ (\$450,000), and the minimum amount shall be thirty thousand dollars (\$30,000).

## 16.2 Eligibility Standards

16.2.1 To be eligible for Relocation Assistance, a Project must serve a public purpose by creating new employment in the State, and should be from targeted industries which include manufacturers, wholesalers, laboratories, data processing, engineering, financial services (except banks subject to bank franchise tax), or administration and/or provide a minimum of 25 new jobs by either transferring out-of-state employees to new residences in the State or by attracting new employees for the Delaware operation.

16.2.1.1 The following criteria are used to determine eligibility:

16.2.1.1.1 A company not presently in the State relocates to the State.

16.2.1.1.2 A distinct division, subsidiary, or company with an existing Delaware presence that relocates additional operations to the State.

16.2.1.1.3 A significant expansion of an existing Delaware operation by relocating new and distinct operations not currently being done in the State, but previously done out-of-state that:

16.2.1.1.3.1 increases permanent full-time employment over their current Delaware base;

16.2.1.1.3.2 demonstrates that new and distinct operations being relocated are added to the existing Delaware operation.

16.2.1.1.4 The assistance provided should be a critical element in the relocation decision.

16.2.2 Applicant for Relocation Assistance shall provide for substantiation of eligibility before funding of a Project will occur.

16.2.2.1 The following criteria are used to determine substantiation:

16.2.2.1.1 Machinery & Equipment - The Applicant must provide actual receipts of expenses associated with the physical relocation and installation of equipment from a previous location to the State. (The purchase and installation of new equipment is not eligible).

16.2.2.1.2 Personnel - The Applicant shall provide evidence of the physical relocation of those employees which have moved and established a new residence in the State.

## 16.3 Project Approval Standards

16.3.1 Findings. - As a precondition to approving

Relocation Assistance, the Authority shall make the findings and determinations required by 29 Del.C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

16.3.1.1 Employment Standard. - The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Relocation Assistance, the Authority shall determine that the Applicant intends to maintain and/or is capable of maintaining or providing gainful employment within the State. The standards to be considered by the Authority will include, but not be limited to, the number of permanent, quality, full-time jobs created or retained as a result of the Project, the wage scale applicable to persons to be employed as a result of the Project, the economic situation in the State at the time of filing of the Application, the effect of the Project on the tax base of the State or of the county or municipality in which the Project is to be located, and the expected impact that the Project will have on the development of new or expanded economic activity within the State.

16.3.1.2 Capability Standard; Adherence to Law. - In determining whether the Project will assist in creating or retaining "direct, permanent, quality full-time jobs" in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any operator or principal user of the Project.

16.3.1.3 Business Standard. - In making findings and determinations with respect to the capital investment in a Project, the Authority will consider capital investment made and to be made in the proposed Project. If the Project involves an Agricultural Business or a Commercial Business, as those terms are defined in the Act, the Project must require a capital investment of at least ten thousand dollars (\$10,000), which funds, including the amount of Relocation Assistance will be available or expended on the date that the Authority provides such during a period of time commencing one (1) year prior to the date on which an application for Relocation Assistance is

~~submitted to the Authority and terminating one year following the making of a grant with respect thereto. The Applicant must provide at least a One Hundred Thousand Dollar (\$100,000) capital investment in and/or secure at least One Hundred Thousand Dollars (\$100,000) of capital leases for buildings and/or equipment in the State. The term "capital investment" shall be applied in accordance with generally accepted accounting principles.~~

16.3.1.4 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Project. The Authority shall apply the same standards with respect to the operators and principal users of the Project as are applied to Applicants, unless there is good reason, established by the Applicant, to make the findings and determinations with respect to the Applicant alone. The financial strength of the Applicant and his capacity to manage or operate the Project, among other considerations, may be the basis for omitting such findings and determinations with respect to the operators or principal users.

16.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Relocation Assistance granted under this section 16.

16.3.3 Post-Grant Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, for a period of five (5) years following the award of Relocation Assistance, submit to the Authority, on an annual basis, financial statements in a form acceptable to the Authority, a progress report on the status of the Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Project and the wage scale applicable to such persons, any economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## **17.0 EXEMPT PERSONS DEVELOPMENT ASSISTANCE**

### 17.1 Program Description.

17.1.1 The Authority is empowered to make financial assistance ("Financial Assistance") in the form of grants or loans to Exempt Persons, as defined in the Act. Exempt Persons are governmental units and certain non-profit organizations described in section 501(c)(3) of the federal Internal Revenue Code of 1986 public or governmental bodies ("Financial Assistance"). ~~The maximum amount of any Financial Assistance by the Authority shall be thirty percent (30%) of the project costs~~

~~with respect to a Project. The Authority may, in its sole discretion, limit the amount of Financial Assistance in a Project to any amount less than thirty percent (30%).~~

17.1.2 The maximum amount of Financial Assistance with respect to a Project ordinarily shall be four hundred fifty thousand dollars (\$450,000), and the minimum amount of such assistance shall be thirty thousand dollars (\$30,000).

### 17.2 Eligibility Standards

17.2.1 To be eligible for Financial Assistance, a Project shall demonstrate ~~broad potential for future development or continuation of the State's economic base.~~ to contribute to the prosperity, health or general welfare of the citizens of the State by contributing, directly or indirectly, to the retention and expansion of existing Delaware businesses, to the recruitment of new businesses to the State, or to the formation of new businesses in the State.

17.2.2 If the Applicant involves individuals or organizations other than Exempt Persons in a Project, then the Applicant must also demonstrate that the involvement of such individuals or organizations on the Project will contribute to the prosperity, health or general welfare of the citizens of the State by contributing, directly or indirectly, to the retention and expansion of ~~improve the quality and/or increase the productivity and profitability of the State's economy,~~ existing Delaware businesses, to the recruitment of new businesses to the State, or to the formation of new businesses in the State, and the Applicant must define such individual's or organization's responsibilities and document their willingness and ability to perform.

### 17.3 Project Approval Standards

17.3.1 Findings. - In connection with the approval of Financial Assistance for a Project, the Authority shall make the findings and determinations required by 29 Del. C. § ~~5055-5054(f)(2)~~ with respect to the Project. The Authority shall apply the following standards where applicable in making such findings and determinations:

17.3.1.1 General Findings Standard. - The Authority will review the information submitted by the Applicant to determine whether the Project will tend, directly or indirectly, to maintain or provide gainful employment within the State. The standards to be considered will include, but not be limited to, the number of permanent, quality, full-time jobs that could be created or saved as a result of the Project, the economic situation in the State, and the expected effect that the Project will have on the development of new or expanded economic activity within the State. If the Project is for pollution control purposes, the Authority will determine whether the Project will reduce, abate or prevent pollution of the State's environment or protect its natural resources.

17.3.1.2 Public Purpose Standard. - The Applicant must demonstrate that the proposed Project will serve a public purpose by contributing to the prosperity,

health, or general welfare of the citizens of the State.

17.3.1.3 Adherence to Law. - Should the Applicant involve individuals or organizations in conjunction with a Project, findings and determinations must be made that such individuals and organizations have not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application.

## 18.0 SBIR BRIDGE GRANT ASSISTANCE

### 18.1 Program Description

18.1.1 In order to encourage Delaware small businesses to participate in the federal Small Business Innovation Research ("SBIR") program, the Authority has set forth criteria to help maintain continuing SBIR program research and development. The purposes of the SBIR program are to (i) stimulate technological innovation; (ii) use small business to meet federal research and development needs; (iii) encourage the participation by disadvantaged and minority persons in technological innovation; and (iv) increase private sector commercialization of results derived from federal research and development.

18.1.1.1 The SBIR program is divided into three phases. The purpose of SBIR Phase I is to show: (i) that the Assisted Person can do high quality research and development; (ii) that the proposed effort is technically feasible; and (iii) that sufficient progress has been made to justify a much larger federal agency investment in an Assisted Person's project in connection with SBIR's Phase II. An SBIR Phase I Award can be as much as one hundred thousand dollars (\$100,000). The SBIR Phase II is the principal research and development effort, with a duration which normally does not exceed two years. Federal awards for SBIR Phase II are based upon the results of SBIR Phase I and the scientific and technical merit of the SBIR Phase II proposal. The object is to continue the research and development initiated under SBIR Phase I. An SBIR Phase II award can be as much as five hundred thousand dollars (\$500,000). However, the federal government is not obliged to fund any specific Phase II proposal. SBIR Phase III encourages small businesses to seek commercialization funding principally from the private sector (no federal SBIR funding is provided).

18.1.1.2 The SBIR Bridge Grant Assistance program (the "Program") seeks to permit the Applicant to maintain its staff and continue its research pending SBIR Phase II approval, which may take as long as nine months after the submission of an SBIR Phase II proposal. Thus, a Program grant of financial assistance (an "Award") may be used to help cover the salaries of personnel after completion of Phase I and before Phase II monies become available. In addition, an Award may be used to help defray expenses

connected with scientific research, patent search and applications, strategic and business plan development, market research, product planning and product development. Capital equipment and construction or modifications of facilities are not covered.

### 18.1.2 Award Approval and Standards

18.1.2.1 Findings. - In connection with the approval of an Award, the Authority shall make the findings and determinations required by 29 Del. C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards in making such findings and determinations:

18.1.2.1.1 SBIR Participation. - In order to be eligible for an Award, an Applicant must establish that it has been granted an SBIR Phase I award and has submitted a proposal to the appropriate federal agency for, but has not yet received, SBIR Phase II funding.

18.1.2.1.2 Principal Place of Business Standard. - In determining whether an Applicant's principal place of business is in the State, an Applicant shall demonstrate to the Authority that its Delaware operation is either its sole operation or its primary business location.

18.1.2.1.3 Economic Benefit Standard. - When applying the "Economic Benefit Standard" the Authority will review the information submitted by an Applicant to determine whether the Project will tend to maintain or provide gainful employment within the State. The standards to be considered will include, but will not be limited to, the wage scale applicable to persons to be employed as a result of the research project, the economic situation in the State, the effect of the project on the tax base of the State, and of the county or municipality in which the project is to be located, and the expected effect that the research project will have on the development of new economic activity within the State.

18.1.2.1.4 Employment Standard. - The Authority shall require that an officer or principal of the Applicant certify to the Authority that the Applicant maintains a full-time equivalent of not more than one hundred ~~fifty~~ (100~~50~~) employees at the time of Application the Award.

18.1.3 Approval. - The Authority may, after applying the foregoing standards, approve a Project and provide an Award to an Applicant up to a maximum of fifty thousand dollars (\$50,000). No more than three (3) Awards will be granted to an Applicant in any five (5) year period. The maximum amount of Awards an Applicant may receive in a lifetime is two hundred thousand dollars (\$200,000). Additional Awards may be granted by the Authority, but the Authority may, in its discretion, require repayment of such additional awards. An Award may be made, at the sole discretion of the Authority, in a lump sum or in installments. The specific conditions under which the Authority shall make an Award to an Applicant shall be set forth in a

commitment letter between the Authority and the Applicant.

18.1.4 Post-Award Documentation. - The following documentation shall be required of all Applicants receiving Awards:

18.1.4.1 A summary of the work performed under the Award no later than August 31 of each of the five (5) years following the Award or otherwise as required by the Authority. Such summary shall include projections or documentation of any actual commercialization of the Project (such as patents obtained, new products developed, etc.) and any economic impact (in terms of employment and/or sales impact with the company, etc.) of such commercialization.

18.1.4.2 Notification of Phase II SBIR award results immediately after the award is made or denied.

## **19.0 BROWNFIELD ASSISTANCE**

### **19.1 Program Description**

19.1.1 The Authority is empowered to make financial assistance in the form of matching grants to Applicants for the costs of conducting environmental assessments and remediation at Certified Brownfield sites investigations of vacant, unoccupied, or underutilized sites, with respect to any portion thereof, that the Applicant has reasonable cause to believe may as the result of any prior commercial or industrial activity by any person, have been environmentally contaminated in a manner that would interfere with the intended use of such site ("Brownfield Assistance").

~~19.1.2 The maximum amount of Brownfield Assistance by the Authority shall be twenty five thousand dollars (\$25,000) or fifty percent (50%) of the total Project costs, whichever is less, for environmental investigations of sites eligible for Brownfield Assistance (an "Eligible Project"). The Authority may, in its sole discretion, limit the amount of Brownfield Assistance in any Eligible Project to any amount less than twenty five thousand dollars (\$25,000) or fifty percent (50%).~~

19.1.2 The maximum amount of Brownfield Assistance by the Authority with respect to any single Certified Brownfield shall be the lesser of (a) fifty thousand dollars (\$50,000), or (b) fifty percent (50%) of the total costs of environmental assessment and remediation with respect to that Certified Brownfield (an "Eligible Project"). The Authority may, in its sole discretion, limit the amount of Brownfield Assistance for any Eligible Project to any amount less than fifty thousand dollars (\$50,000) or fifty percent (50%) of environmental assessment and remediation at the Eligible Project. The Authority may not award more than one million dollars (\$1,000,000) of Brownfield Assistance, in aggregate, during any fiscal year of the State.

### **19.2 Eligibility Standards**

19.2.1 The following criteria will be used to determine eligibility for Brownfield Assistance:

19.2.1.1 The proposed investment should have the potential to serve a public purpose by maintaining or expanding employment in the State by maintaining, expanding, or diversifying business and industry in the State, and/or maintaining or increasing its tax base.

19.2.1.2 Since Brownfield Assistance is in the form of matching grants, the Applicant shall demonstrate to the satisfaction of the Authority that funds are available for environmental assessment and remediation expenses at the Eligible Project ~~project expenses~~ that will equal or exceed the amount of Brownfield Assistance requested.

~~19.2.1.3 Because Eligible Projects must be Certified Brownfields, the Applicant must submit with its Application the written certification of the Eligible Project as a Brownfield issued by the Secretary of the Department of Natural Resources and Environmental Control. Sites which qualify for Brownfield Assistance shall be Property as defined in 7 Del.C. § 9103, or any portion thereof, for which industrial or commercial development is proposed and which would result in the expansion, retention, or start-up, of an existing or new business. The Applicant shall demonstrate to the satisfaction of the Authority that reasonable cause exists for the Applicant to believe the site may have been environmentally contaminated as the result of prior commercial or industrial activity by any person other than a current or future user of the site, and that said contamination will interfere with the intended proposed use of such site.~~

~~19.2.1.4 Eligible Project sites are vacant, unoccupied, or underutilized. An underutilized site is one that the Applicant can demonstrate to the satisfaction of the Authority (1) is not being used in its fullest capacity or form, as evidenced by historical data and/or use, or (2) is a site for which the expansion of business is targeted. Evidence of expansion shall include a business plan which outlines proposed capital investment and job creation, or retention of existing business activity.~~

~~19.2.1.5 Eligible Projects are those which the Authority concludes, in its sole discretion, are sites of the type that are targeted by Title 7, Del. C., Chapter 91.~~

19.2.2 The following expenses or types of real property do not qualify for Brownfield Assistance:

19.2.2.1 Expenses for environmental assessment and remediation incurred prior to January 16, 2001 ~~July 1, 1995~~;

19.2.2.2 Project Expenses for environmental assessment which are considered by the Authority, in its sole discretion, as normal and ordinary in the course of any financing or real estate transfer transaction or Phase One assessments;

19.2.2.3 Any site with respect to any portion of which enforcement action has been initiated under Chapter 63, Chapter 74 or §9101 of Title 7 of the Delaware Code; 42 U.S.C. § 6901 et seq.; or 42 U.S.C. § 9606 or § 9607;

19.2.2.4 Sites which are owned by a governmental unit of the State; and

19.2.2.5 Sites located outside the State.

### 19.3 Project Approval Standards

19.3.1 Findings. - As a precondition to approving Brownfield Assistance, the Authority shall make the findings and determinations required by 2 Del. C. § 5055 with respect to the Applicant and the Project. The Authority shall apply the following standards, where applicable, in making such findings and determinations:

19.3.1.1 ~~Employment Standard. — The Authority will review information concerning the Applicant as submitted in an Application or as otherwise available to the Authority through independent investigation. As a condition precedent to making Brownfield Assistance to an Applicant, the Authority shall determine that the Eligible Project proposed by the Applicant will assist in maintaining or providing gainful employment within the State.~~ Capability Standard; Adherence to Law. - In determining whether the Project may assist in creating or retaining employment in the State, the Applicant shall demonstrate to the Authority that the Applicant, operator or principal user thereof has the capability to operate and maintain such Project efficiently and that the Applicant has not been convicted of a major labor law violation or of a violation involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the Applicant's Application. In this regard, the Authority may, in its discretion, rely on a sworn affidavit of the Applicant or an officer of the Applicant or an opinion of counsel of the Applicant to such effect. If an Applicant has been convicted of such a violation, the Authority, in its sole discretion, may decline to consider the Application. If requested by the Authority, similar proof shall be obtained from any proposed operator or principal user of the Eligible Project.

19.3.1.2 Operator and User Standard. - An Applicant shall, if requested by the Authority or required in the Application, submit such information as is requested or required for each proposed operator or principal user of the Eligible Project. The Authority shall apply the same standards with respect to the operators and principal users of the Eligible Project as are applied to the Applicants, unless the Applicant establishes good reason to make the findings and determinations with respect to the Applicant alone.

19.3.2 Clawback Provision. - The Authority shall determine, in its sole discretion, appropriate clawback provisions for each Applicant under which the Applicant may be required to repay some or all of the Brownfield Assistance granted under this section 19.

19.3.3 Post-Grant Period - Annual Reporting. - Unless waived or amended by the Authority in its sole discretion, the Applicant shall, ~~for a period of three (3) years following the award of Brownfield Assistance,~~ within ninety

(90) days after completing the environmental assessment and/or remediation at the Eligible Project, submit to the Authority a written report setting forth the total costs for management and labor, equipment, sampling and analysis and the removal and disposal of hazardous waste or other materials at the Eligible Project, on an annual basis, a progress report on the status of the Eligible Project, including, but not limited to, the number of permanent, quality, full-time jobs created or saved as a result of the Eligible Project and the wage scale applicable to such persons, an economic impact of the funding (such as sales, costs, etc.) and any other information required by the Authority. Each Applicant shall report to the Authority no later than August 31 of each of the years for which the report is required.

## **DELAWARE ECONOMIC DEVELOPMENT OFFICE DELAWARE TOURISM OFFICE**

Statutory Authority: Laws of Delaware  
Volume 73, Chapter 74, Section 67

### **Direct Grants Program**

The public may send comments to the Delaware Tourism Office, Attention Julie Miro Wenger, 99 Kings Highway, Dover, DE 19901 or via email to jumiro@state.de.us

#### **1.0 Program Description**

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Direct Grants are only toward not-for-profit tourism entities are eligible. All projects must tie in to the State Marketing Plan.

1.2 The total amount available is for direct grants is designated by the general assembly in the operating budget. It is expected that there will be a number of direct grant programs awarded.

1.3 To be eligible, organizations must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

#### 1.5 Use of Funds:

1.5.1 It is expected that the funds will be used to actively market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware.

1.5.2 The same organization may apply for more than one Direct Grant program.

**2.0 Award Determination:**

2.1 The organizations receiving awards will be selected by a panel composed of the following:

- 2.1.1 Delaware Tourism Office
- 2.1.2 Governor's Tourism Advisory Board

**3.0 Criteria:**

3.1 Organizations must demonstrate that their vision supports one or more of the attract goals of the Delaware tourism industry's Five-Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. The program must support the Delaware Tourism Office Marketing Plan. DTO logo must appear on all created collateral. There will be no attempt to balance the awards geographically, politically, or categorically.

**4.0 Award Process**

4.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. Awards will be announced the following week.

**4.2 Direct Grant Award Payments:**

4.2.1 Payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. All requirements and criteria of the program need to be met.

**5.0 Eligibility**

5.1 Not-for-profit tourism related businesses and organizations.

5.2 Submitting organizations must submit proof of not-for-profit status.

5.3 Only in-state tourism entities may apply

5.4 The organization's main product or program must fit into the Industry's 5-Year Strategic Plan.

**6.0 Application Requirements**

6.1 Incomplete applications will not be considered (see application for required attachments).

6.2 More than one application may be submitted per organization.

6.3 All completed applications must sent to the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location.

6.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

**7.0 Grant Awards**

7.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Direct Grant

Program is to attract new visitors and overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit direct grant proposals. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

**8.0 Payments**

8.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

8.2 All invoices must be submitted to the Delaware Tourism Office.

**9.0 Use of Funds**

9.1 Funds may not be used for:

9.1.1 General operating expenses including staff salaries.

9.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

9.1.3 Food and beverages

9.1.4 Equipment purchase and rental

9.1.5 Business directories

9.1.6 Postage and office supplies

9.1.7 Meeting expenses

9.1.8 Anything contrary to state law.

9.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

**10.0 Project Completion Requirements**

10.1 At a minimum the following must be submitted for final payment:

10.1.1 Completed project report

10.1.2 Invoices must be submitted.

10.1.3 Marketing plan

10.1.4 Delaware Tourism Office name and logo must appear on all created collateral

10.2 Other project completion requirements may be added at the time of the award based on project definition.

**11.0 Applicant Information**

11.1 Applicants shall fill out the Direct Grant program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at 99 Kings Highway, Dover, DE 19901.§

**DELAWARE ECONOMIC DEVELOPMENT OFFICE**  
**DELAWARE TOURISM OFFICE**

Statutory Authority: Laws of Delaware  
 Volume 73, Chapter 74, Section 67

**Matching Funds Program**

The public may send comments to the Delaware Tourism Office, Attention Julie Miro Wenger, 99 Kings Highway, Dover, DE 19901 or via email to jumiro@state.de.us

**1.0 Program Description**

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Matching Funds Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit matching funds proposals. However, for profit businesses are allowed to participate in partnership programs submitted by notfor-profits. All packaging programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan.

1.2 The total amount available for matching grants is designated by the general assembly in the operating budget. It is expected that there will be a number of matching funds programs awarded. Four or more properties working together on a package will be able to receive a match of 2 to 1 instead of 1 to 1.

1.3 To be eligible, the applicant organization must have a marketing plan with a clear vision as to how to attract outofstate visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

**1.5 Use of Funds:**

1.5.1 It is expected that the funds will be used to market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware:

1.5.2 The same organization may apply for more than one Matching Fund program.

1.5.3 The purpose is to attract visitors to Delaware and to bring in overnight business. Therefore, advertising applicants must show a plan to advertise out of state.

**2.0 Matching Funds:**

2.1 Matching funds are required. The organization's matching fund commitment is part of the application. The organization's matching fund commitment must be met for full payment of the grant. No other state grant funds may be used for the organization's match.

**3.0 Award Determination:**

3.1 The organizations receiving awards will be selected by a panel composed of the following:

3.1.1 Delaware Tourism Office

3.1.2 Governor's Tourism Advisory Board

**4.0 Criteria:**

4.1 Organizations must demonstrate that their vision supports the Delaware tourism industry's Five Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. There will be no attempt to balance the awards geographically, politically, or categorically.

**5.0 Award Process**

5.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. The awards will be announced a week later.

**5.2 Grant Award Payments:**

5.2.1 The payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. To receive final payment, all organizations will need to complete all project completion requirements.

**6.0 Eligibility**

6.1 Notforprofit tourism related businesses and organizations.

6.2 Submitting organizations must submit proof of not-for-profit status.

6.3 For profit tourism businesses may be part of programs submitted for grant programs ,however, they must be a partner of a not-for-profit applicant organization.

6.4 Only instate tourism entities may apply.

6.5 The organization's main product or program must be intended to attract new visitors and overnight business.

6.6 Partnerships between four or more tourism entities are encouraged. Partnerships will receive a 2 to 1 dollar match instead of a 1 to 1 dollar match.

**7.0 Application Requirements**

7.1 Incomplete applications will not be considered (see application for required attachments).

7.2 More than one application may be submitted per organization.

7.3 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. Applications may not be submitted electronically, via fax or email.

7.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.5 If the creation of a package is a proposal for Matching Funds the package must include a hotel property.

7.6 All invoices must be received at the Delaware Tourism Office, 99 Kings Highway, Dover DE 19901.

### **8.0 Matching Funds**

8.1 All funds must be raised and collected prior to payment of the award.

8.2 No other state grant funds may be used for the organization's match.

8.3 Staff salaries, volunteer labor and inkind donations do not qualify as a match.

### **9.0 Grant Awards**

9.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Matching Funds Program is to attract new visitors and overnight business to Delaware. The goal of the Matching Funds Program is to increase the visibility of Delaware's tourism product. Four or more properties working together including at least one hotel, through a package will be able to receive a match of 2 to 1 instead of 1 to 1. Only not for profit entities are able to submit matching funds proposals. However, for profit businesses are allowed to participate in partnership programs submitted by nonprofits. All package programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

### **10.0 Payments**

10.1 Final payments may be requested after all project completion requirements have been met and proper documentation is submitted.

10.2 All invoices must be sent to the Delaware Tourism Office.

### **11.0 Use of Funds**

11.1 Funds may not be used for:

11.1.1 General operating expenses including staff salaries.

11.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

11.1.3 Food and beverages

11.1.4 Equipment purchase and rental

11.1.5 Business directories

11.1.6 Postage and office supplies

11.1.7 Meeting expenses

11.1.8 Anything contrary to state law.

11.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

### **12.0 Project Completion Requirements**

12.1 At a minimum the following must be submitted for final payment:

12.1.1 Completed project report

12.1.2 Invoices

12.1.3 Marketing plan

12.1.4 Delaware Tourism Office name and logo must appear on all created collateral.

12.2 Other project completion requirements may be added at the time of the award based on project definition.

### **13.0 Applicant Information**

13.1 Applicants shall fill out the Matching Funds program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at: 99 Kings Highway, Dover, DE 19901.

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

Statutory Authority: 11 Delaware Code,  
Chapter 85 (11 Del.C. Ch. 85)

**Delaware Regulations for the  
Delaware Adult Abuse Registry**

### **PUBLIC NOTICE**

### **REGULATIONS GOVERNING THE ADULT ABUSE REGISTRY**

Delaware Health and Social Services (DHSS) has prepared revised draft regulations governing the Delaware Adult Abuse Registry as authorized by Title 11 Del. Code Chapter 85.

These regulations govern the placement upon the registry of persons for whom an allegation of abuse, neglect, mistreatment or financial exploitation has been substantiated. Additionally, the regulations establish the procedures for employers to follow when conducting checks of the registry of potential employees. Lastly, they establish procedures for private individuals to follow when conducting checks of potential employees for services in a private residence.

### **INVITATION FOR PUBLIC COMMENT**

Second public hearings will be held as follows:  
Monday, October 1, 2001, 10:00 AM

Department of Natural Resources & Environmental  
Control Auditorium  
89 Kings Highway  
Dover

Friday, October 5, 2001, 9:30 AM  
Main Building, Conference Room 301  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

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

Written comments are also invited on these revised draft regulations and should be sent to the following address:

John T. Murray  
Division of Long Term Care Residents Protection  
3 Mill Road  
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing October 5, 2001.

#### **Section 1: Definitions**

(A) "Adult Abuse" means:

(1) Physical abuse including the intentional and unnecessary infliction of pain or injury to an infirm adult or the threat thereof. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair, or any sexual contact, or the threat of any of the above acts.

(2) Emotional abuse including, but not limited to:

- (a) Ridiculing or demeaning an infirm adult.
- (b) Making derogatory remarks to an infirm

adult.

(c) Cursing directed towards an infirm adult.

(d) Threatening retaliation, directly or indirectly

(3) Mistreatment including the inappropriate use of medications, isolation or physical or chemical restraints on or of an infirm adult.

(4) Neglect including:-

(a) Intentional lack of attention to physical needs of the infirm adult including, but not limited to, toileting, bathing, meals and safety.

(b) Intentional failure to report health problems or changes in health problems or changes in health condition of an infirm adult to an immediate supervisor, doctor or nurse.

(c) Intentional failure to carry out a prescribed treatment plan for an infirm adult.

(5) Misappropriation of property including the theft of money or property from the infirm adult, use of money or property without permission of the infirm adult or guardian, and mishandling of money or property belonging

to the infirm adult.

(B) "Substantiated Abuse" means that, weighing the facts and circumstances, a reasonable person has concluded that more likely than not the identified individual has committed adult abuse.

(C) "Person Seeking Employment" means any person applying for employment in a health care facility or child care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

(D) "Health Care Facility" means any custodial or residential facility where health, nutritional or personal care is provided for infirm adults, including nursing homes, hospitals, home health care agencies, and adult day care facilities.

(E) "Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

(F) "direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(G) "Infirm adult" means any person 18 years of age or over who is physically or mentally impaired, either permanently or temporarily.

(H) "proposed concern" refers to a temporary classification used until the final determination is made.

(I) "Department" means the Department of Health and Social Services.

#### **Section 2: Use of Registry**

(A) No employer who operates a health care facility or child care facility shall hire any person seeking employment without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(2) The employer shall call the Adult Abuse Registry, provide the name and social security number of the person seeking employment, and will be informed of any information contained in the registry.

(B) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(1) The employment of the person shall be conditional and contingent upon receipt of the Adult Abuse Registry check by the employer.

(2) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse

Registry check.

**Section 3: Investigation of Adult Abuse.**

(A) The Department shall investigate any individual against whom an allegation of adult abuse has been made.

(B) If the investigator determines preliminarily that the facts and circumstances conclude that more likely than not the individual has committed abuse or neglect, the individual's name shall be placed on the Adult Abuse Registry with a finding of "Proposed Concern".

**Section 4: Administrative Hearings**

(A) Individuals against whom an allegation is preliminarily substantiated shall be notified in writing of the intent to place their name on the Adult Abuse Registry with a finding of "Substantiated Abuse" and shall be offered a right to an administrative hearing. Information contained in the finding of substantiated abuse shall consist of:

- (1) The date of the incident
- (2) The type of facility where the incident occurred
- (3) A brief description of the incident
- (4) Length of time the finding remains on the Abuse Registry

Abuse Registry

(B) Individuals must request in writing an administrative hearing within 30 days of the date of the notice that a finding of abuse has been preliminarily substantiated.

(C) Individuals who fail to request an administrative hearing within 30 days shall have their name and information regarding the incident changed from a finding of "Proposed Concern" to a finding of "Substantiated Abuse" on the Adult Abuse Registry 30 days after the date of the notice.

(D) Individuals who have entered a plea or who have been convicted by a court of law of adult abuse, shall not have the right to an administrative hearing. Their name and information regarding the incident shall be entered directly to the Adult Abuse Registry.

(E) The Department shall make a scheduling decision within 10 days of receipt of a request for an administrative hearing by an individual who has received notice of a preliminary finding of substantiated abuse.

(1) An individual requesting an administrative hearing shall be entitled to a statement describing the incident, the date and location of the incident, and the name of the victim.

(2) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Department presents.

(3) If, at the conclusion of the hearing, the hearing officer concludes that, weighing the facts and circumstances, more likely than not, the identified individual has committed adult abuse, a notice of "substantiation" shall be placed on the registry.

(4) The hearing officer shall render a written decision and will notify the individual and the Office of the Ombudsman of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the registry.

(5) The decision of the hearing officer is final.

**Section 5: Length of time on the Abuse Registry**

The length of time on the Abuse Registry shall be no less than five years and may be permanent. The length of time shall be based on the actual injury or risk of injury to the infirm adult and whether there exists a pattern of adult abuse. Notwithstanding the above, the length of time on the registry may be less than five years if there is evidence of mitigating circumstances indicating that adult abuse by the individual was a singular event and not likely to reoccur.

**Section 6: Registry of Nurse Aides**

The names of registrants with findings of abuse, neglect, or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered into the Adult Abuse Registry with a finding of substantiated abuse. The finding shall remain on the Adult Abuse Registry for so long as the finding remains on the Registry of Nurse Aides. There shall be no right of appeal for findings entered on the Adult Abuse Registry under this section.

**Section 1: Definitions**

"Abuse" shall have the same meaning as contained in 16 Del. C., § 1131, and shall include mistreatment, neglect and financial exploitation as defined therein.

"Child Care Facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

"Contractor" means an entity under contract to provide services for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period for a health care service provider, and whose employees have the opportunity for direct access to persons receiving care. For purposes of these regulations, contractor does not include construction contractors.

"Department" means the Department of Health and Social Services.

"Direct Access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

"Division" means the Division of Long Term Care Residents Protection.

"Health Care Service Provider" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to, hospitals, home health care agencies, adult care facilities,

temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. Health Care Service Provider does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

**"Nursing Facility and Similar Facility"** means any facility required to be licensed under 16 Del. C., Ch. 11. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and psychiatric units of acute care hospitals certified by the Department of Health and Social Services pursuant to 16 Del. C., § 5001 or 5136.

**"Person Receiving Care"** means any person who, because of his/her physical or mental condition, requires a level of care and services suitable to his/her needs to contribute to his/her health, comfort and welfare.

**"Person Seeking Employment"** means any person applying for employment with or in a health care service provider, nursing facility or similar facility that may afford direct access to persons receiving care at such facility, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

**"Substantiated Pending Appeal"** refers to a placement on the Registry based on an investigative finding prior to the subject exercising his/her right to appeal.

**"Substantiated Abuse"** means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

## **Section 2 Use of Registry**

(A) No health care service provider, to include nursing and similar facilities, or child care facility shall hire any person seeking employment or retain any contractors without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby release the indicated employer to obtain from the Division of Long Term Care Residents Protection any information concerning me which may be on the Adult Abuse Registry pursuant to 11 Del. C., § 8564."

(2) When exigent circumstances exist which require

an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(3) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

(B) Private individuals seeking to hire an individual to provide healthcare services in a private residence may request the Division to determine if the potential employee is listed on the Adult Abuse Registry. A short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673.

## **Section 3: Investigation of Adult Abuse**

(A) The Division shall investigate any individual against whom an allegation of adult abuse has been made in accordance with the timeframes delineated in 16 Del. C., § 1134(d).

(B) If the investigation substantiates pending appeal that the alleged abuse occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Substantiated Pending Appeal," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.

(C) The Division may accept preliminary investigations by a state agency or an entity contracted by a state agency. The Division will review and may revise the findings upon further investigation.

(D) Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer, if different, and the victim that the person is on the Registry as "Substantiated Pending Appeal."

## **Section 4: Administrative Hearings**

(A) An individual against whom an allegation is substantiated pending appeal shall be notified by certified mail at his/her home address, to be followed by written notice in care of his/her current employer at the discretion of the Division, that his/her name has been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. The burden of proof in such hearing shall be on the Division. Individuals shall be informed upon completion of the investigation of the following:

(1) The date and time of the incident.

(2) The name and type of facility where the incident occurred.

(3) A brief description of the incident.

(4) Length of time the finding remains on the Adult

Abuse Registry.

(B) All requests for an administrative hearing must be received in writing, postmarked within 30 days of the date of the notice that a finding of abuse has been substantiated pending appeal. The Director or his/her designee shall dismiss untimely requests for hearing except when the individual submits evidence of good cause.

(C) An individual who fails to request an administrative hearing as described above shall have his/her name and information regarding the incident changed from a finding of "Substantiated Pending Appeal" to a finding of "Substantiated Abuse" on the Adult Abuse Registry. At that time the Division shall notify the individual, the facility from which the complaint originated as well as the current employer, if different, and the victim that the individual is on the Registry with a finding of "Substantiated Abuse."

(D) An individual who has entered a plea or who has been convicted by a court of law of adult abuse shall have the right to an administrative hearing solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(E) The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto, provided however, the hearing officer may order the release of statements of witnesses.

(F) The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date.

(G) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Division presents. Limited continuances shall be granted for good cause.

(H) If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse, for the purpose of placement on the Adult Abuse Registry, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry. If, at the conclusion of the hearing, the hearing officer concludes that the individual has not committed adult abuse, the finding of "Substantiated Pending Appeal" shall be removed from the Adult Abuse Registry.

(I) The hearing officer shall render a written decision within thirty working days of the hearing and will notify the individual, the Division, the facility and the victim of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the Adult Abuse Registry.

(J) Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the

finding. The decision of the hearing officer may be appealed on the record to Superior Court.

#### **Section 5: Length of Time on the Adult Abuse Registry**

(A) The length of time on the Adult Abuse Registry shall be based on the seriousness of the incident and whether there exists a pattern of adult abuse. Evidence of mitigating circumstances may be considered.

(B) The names of registrants with findings of abuse, neglect or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered on the Adult Abuse Registry with a finding of substantiated abuse. There shall be a right of appeal for findings entered on the Adult Abuse Registry under this section solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(C) Upon final disposition of the allegation, the Division shall notify, in writing, the victim, the facility where the incident occurred as well as the current employer of the individual, if different, of the final disposition.

#### **Section 6: Removal of a Person from the Adult Abuse Registry**

(A) The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his/her registration period when the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 Del. C., § 8564(g).

(B) A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:

(1) A minimum of twelve months has passed since his/her placement on the Registry.

(2) Affirmative steps have been taken to correct behavior that led to placement on the Registry, i.e. anger management counseling, drug/alcohol treatment, sensitivity training, etc.

(3) Demonstrated improved behavior through work references.

(C) The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the Division denies the request, the petitioner may request a hearing to appeal the denial, or reapply for the removal after 6 months or when the petitioner can produce evidence of performance of the affirmative steps listed above.

#### **Section 7: Disclosure of Adult Abuse Registry Records**

Except as otherwise provided in these regulations, the dissemination of information contained in the Adult Abuse Registry shall be limited as follows:

(A) Hearing Officer Opinions shall be released upon request to the following:

- (1) The subject of the hearing.
- (2) A victim identified by name in the record or his/her legal representative.
- (3) Law enforcement officials pursuant to an official investigation.
- (4) The Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.
- (5) The Medicaid Fraud Control Unit of the Department of Justice.
- (6) The Division of Professional Regulation if a finding of substantiated abuse pertains to a licensed professional.

(B) Investigative files shall be released upon request to:

- (1) Law enforcement officials pursuant to an official investigation.
- (2) The Medicaid Fraud Control Unit of the Department of Justice.
- (3) Rights protection agencies otherwise entitled under applicable federal or state law.

#### **ADDENDUM** **REPORTING TO NURSE AIDE REGISTRY**

In accordance with 42 CFR § 483, the Division of Long Term Care Residents Protection will report findings of abuse to the Nurse Aide Registry under the following procedure:

1. When the Division has substantiated pending appeal a finding of abuse, neglect, mistreatment or financial exploitation against a certified nurse assistant, a determination will be made whether the substantiated findings meet the criteria required in the federal regulations or the criteria in state statute and regulations.

2. If the findings support the criteria for abuse, mistreatment or misappropriation of property in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding will result in a lifetime prohibition against employment in a federally certified facility.

3. If the findings support the criteria for neglect in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding of neglect will result in a lifetime prohibition against employment in a federally certified facility. However, the CNA will be further informed of his/her right to petition the Division to have the report removed from the Nurse Aide Registry in accordance with

§1819(g)(1)(D) of the Social Security Act.

4. The notice to the certified nurse assistant will include an explanation that the hearing described in the Adult Abuse Registry regulations will also consider the placement of the CNA on the Nurse Aide Registry. The CNA will be informed that if the evidence presented at a hearing does not warrant a finding of abuse, neglect, mistreatment or misappropriation of property under the federal regulations, the evidence will be considered to determine whether it meets the criteria for abuse, neglect, mistreatment or financial exploitation under the state Adult Abuse statute.

#### **DIVISION OF LONG TERM CARE** **RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,  
Chapter 11 (16 Del.C. Ch. 11)

#### **Delaware Regulations for Group Home Facilities for** **Persons with Aids**

#### **PUBLIC NOTICE**

Delaware Health & Social Services (DHSS) has prepared revised draft regulations governing Group Home Facilities for Persons with AIDS as authorized by Title 16 Del. Code Chapter 11.

These regulations are designed specifically for Group Homes for sixteen (16) or less persons with AIDS and establishes the minimum acceptable level of living, programmatic and licensure standards for such homes.

#### **INVITATION FOR PUBLIC COMMENT**

Second public hearing will be held as follows:

Friday, October 5, 2001, 9:00 AM  
Main Building, Conference Room 301  
Herman Holloway Campus  
Delaware Health and Social Services  
1901 N. DuPont Highway  
New Castle, Delaware

For clarifications or directions, please call Gina Loughery or Joan Reynolds at 302-577-6661.

Written comments are also invited on these revised draft regulations and should be sent to the following address:

Robert Smith  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing.

**DELAWARE REGULATIONS  
GROUP HOME FACILITIES FOR PERSONS WITH  
AIDS****Title 16 – Health and Safety****Part II, Chapter 11 Sanatoria, Rest Homes, Nursing Homes,  
Boarding Homes and Related Institutions**

~~"Sanitorium, rest home, nursing home, boarding home, and related institutions," within the meaning of this chapter, mean any institution, building or agency in which accommodation is maintained, furnished, or offered for any fee, gift, compensation or reward for the care of more than 1 aged, infirm, chronically ill, adult psychiatrically disabled or convalescent person. The word "person" shall not include mother, father, sister, brother, niece, nephew, mother-in-law, father-in-law, sister-in-law, or brother-in-law of any individual operating a facility under this chapter.~~

These regulations are promulgated in accordance with 16 Del.C. Chapter 11

All facilities must comply with applicable local, state and federal laws and regulations.

**REGULATIONS****SECTION 62.0 - DEFINITION**

The following regulations are designed specifically for Group Homes for ~~eight (8)~~ sixteen (16) or less persons with AIDS and establish the minimal acceptable level of living and programmatic conditions in such homes. Only those residents shall be admitted with an established diagnosis and disease progression such that the resident requires a routine and frequent combination of physician, professional nursing and supportive services. Provisions shall be made for the transfer and/or discharge of residents when acute care (hospital) services are required or requested.

**SECTION 62.1 GLOSSARY OF TERMS**

~~62.101 Activities of Daily Living - Getting into or out of bed, bathing, dressing, eating, walking, shaving, brushing teeth and combing hair.~~

Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating and toileting.

~~62.102 Certified Nurse Aide/Nurse Assistant – An individual who provides care that does not require the judgment and skills of a licensed nurse.~~

~~The care may include but is not limited to the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being for the person(s) to whom they are providing care.~~

~~The aide has met the training and testing requirements for nurse aide certification and is included on Delaware Nurse Aide Registry.~~

Certified Nursing Assistant – An individual certified in accordance with 16 Del. C., Chapter 30A who provides care that does not require the judgment and skills of a licensed nurse.

~~62.103 Continuous - Available at all times without cessation, break or interruption.~~

~~62.104 Department – Department of Health and Social Services.~~

~~62.104 62.105 Dietitian - A person currently registered by the Commission on Dietetic Registration of the American Dietetic Association and/or a Certified Dietitian/Nutritionist in the State of Delaware.~~

~~62.105 62.106 Direction - Authoritative policy or procedural guidance for the accomplishment of a function or activity.~~

~~62.107 Division – Division of Long Term Care Residents Protection~~

~~62.106 62.108 Facilities - The site, physical structure and equipment necessary to provide the required service.~~

~~62.107 62.109 Group Home Administrator - The individual responsible for the operation of the group home.~~

~~62.110 Incident – An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment. (Also see Reportable Incident, 62.119.)~~

~~62.108 62.111 Licensed Practical Nurse - A nurse who is licensed to practice as a practical nurse in the State of Delaware or whose license is recognized to practice in Delaware.~~

~~62.109 62.112 Licensee - The person or organization to whom the group home for persons with AIDS license is granted. The licensee has full legal authority and responsibility for the governance and operation of the group home.~~

~~62.110 Medical Services – The services pertaining to medical care and performed at the direction of a physician on behalf of residents by physicians, nurses, or any other professional or technical personnel.~~

~~62.113 Medical and Nursing Services - The services pertaining to medical care and performed at the direction of a physician on behalf of residents by physicians, nurses, or any other professional or technical personnel such as an advanced nurse practitioner or physician's assistant and which may include the curative, restorative, preventive and palliative aspects of nursing care.~~

~~62.114 62.114 Notifiable Diseases - A communicable disease or condition of public health~~

significance required to be reported to the Division of Public Health in accordance with the Delaware Department of Health and Social Services Regulations for the Control of Communicable and other Disease Conditions.

~~62.112~~ 62.115 Nursing Service Personnel - Those licensed or unlicensed persons giving direct services to the residents, pertaining to the curative, restorative, preventive or palliative aspects of nursing care and who are supervised by either a registered professional nurse or a licensed practical nurse.

~~62.113~~ Nursing Services - ~~Those medical services pertaining to the curative, restorative, preventive and palliative aspects of nursing care that are performed or supervised by a registered professional nurse or a licensed practical nurse at the direction of a physician.~~

~~62.114~~ 62.116 Personal Care Services - Those health related services that include general supervision of and direct assistance to, individuals in their activities of daily living.

~~62.115~~ 62.117 Physician - A physician licensed to practice in the State of Delaware.

~~62.116~~ 62.118 Registered Professional Nurse - A nurse who is a graduate of an approved school of professional nursing and who is licensed to practice in the State of Delaware or whose license is recognized to practice in Delaware.

62.119 Reportable Incident - An occurrence or event which must be reported at once to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety. (Also see Incident, 62.110.)

~~62.117~~ 62.120 Resident Beds - Accommodations with supportive services (such as: food, laundry, housekeeping) for persons who generally stay in excess of twenty-four (24) hours.

~~62.118~~ 62.121 Supervision - Direct oversight and inspection of the act of accomplishing a function or activity. That degree of oversight and inspection of licensed and unlicensed personnel necessary to ensure the safety, comfort and well-being of residents.

## SECTION 62.2 LICENSING REQUIREMENTS AND PROCEDURES

### 62.200 License Requirement

No person shall establish, conduct or maintain in this State any sanatorium, rest home, nursing home, or boarding home for the care of human beings without first obtaining a license from the Department of Health and Social Services.

62.200 When a facility is classified under this law or

regulation and plans to construct, extensively remodel or convert any buildings, ~~two (2) copies~~ one (1) copy of property prepared plans and specifications for the entire facility are to be submitted to the Division of Public Health. An approval in writing is to be obtained before such work is begun. After the work is completed, in accordance with the plans and specifications, a new license to operate will be issued.

62.201 Separate licenses are required for facilities, maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds. A license is not transferable from person to person or from one location to another. ~~Under conditions of assignment or transfer of ownership, a new license will be issued.~~

### ~~62.203~~ 62.202 Inspections

Every group home for persons with AIDS for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division of Public Health.

A. Issuance of Licenses. Licenses shall be issued in the following categories:

(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of ~~this chapter~~ 16 Del. C., Chapter 11 and the rules and regulations of the Department of Health and Social Services.

(2) Provisional License. ~~A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to a home which, although not in full compliance, is nevertheless demonstrating evidence of improvement. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted to a group home during its first 90 days of operation. A provisional license may also be granted to a group home, which although not in full compliance, is nevertheless demonstrating evidence of improvement.~~

~~(3) Restricted License. A restricted license shall be granted for a term of ninety (90) days when the home is not in compliance with the provisions of this chapter, and does not demonstrate evidence of improvement. The holder of a restricted license may not admit residents to the home to which the restricted license applies during the period of restriction, but the home may remain in operation until such license is revoked, expires, becomes annual or provisional.~~

### B. Suspension or Revocation of Licenses

~~The Secretary of the Department of Health and Social Services or his/her designee may suspend or revoke a license issued under this chapter on any of the following grounds:~~

~~(1) Violation of any of the provisions of this chapter or the rules and regulations issued pursuant~~

thereto.

(2) ~~Permitting, aiding or abetting the commission of any illegal act in the facility.~~

(3) ~~Conduct or practices detrimental to the welfare of the resident. Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which time he/she may appeal for a hearing before the Secretary of the Department of Health and Social Services or his/her designee.~~

~~Provisional or restricted licenses may be issued by the Office of Health Facilities Licensing and Certification without notice if such actions are deemed to be in the best interest of the residents. The holder of the license may appeal the issuance of the provisional or restricted license to the Secretary or his/her designee, however, the provisional or restricted license will remain in effect during the pendency of the appeal.~~

~~C. Renewal of License After Suspension or Revocation~~

~~If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.~~

~~62.204 62.203 The Division of Public Health may adopt, amend, or repeal regulations governing the operation of the institutions defined in Section 101 of this title facilities defined under 16 Del. C., Chapter 11, Subchapter I., Licensing By The State, and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the residents of such institutions.~~

**SECTION 62.3 GENERAL REQUIREMENTS**

62.301 All required records maintained by the group home for persons with AIDS shall be open to inspection by the authorized representatives of the Division of ~~Public Health~~.

62.302 The term "Group Home" shall not be used as part of the name of any facility in this State, unless it has been so classified by the Department of Health and Social Services.

62.303 No rules shall be adopted by the licensee or administrator which are in conflict with these regulations.

62.304 The Division of ~~Public Health~~ shall be notified, in writing, of any changes in the Administrator.

62.305 The group home shall establish written policies regarding the rights and responsibilities of residents, and these policies and procedures are to be made available to sponsoring agency(ies), and authorized representatives of the Division of ~~Public Health~~.

62.306 ~~Each facility shall provide with the admission agreement to all residents or their sponsors a complete statement enumerating all charges for services, materials and~~

~~equipment which shall, or may be, furnished to the resident during the period of residency.~~

~~62.307 62.306 Each facility shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.~~

~~62.308 62.307 The group home shall provide safe storage for resident's valuables.~~

~~62.309 62.308 The group home provider shall assure emergency transportation and care through use of appropriate transfer agreements with local medical facilities.~~

~~62.310 62.309 All residents shall be afforded all protections and privileges contained in the Delaware Patients Bill of Rights.~~

**SECTION 62.4 PLANT, EQUIPMENT AND PHYSICAL ENVIRONMENT**

62.401 Site Provisions:

Each group home for persons with AIDS shall be located on a site which is considered suitable by the Division of Public Health. The site must be safe easily drained, suitable for the disposal of sewage, and for the furnishing of a potable water supply.

62.402 Water Supply and Sewage Disposal:

A. The water supply and the sewage disposal system shall be approved by the Division of Public Health and the Department of Natural Resources and Environmental Control respectively.

B. The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.

C. Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).

62.403 Building:

A. The building shall be so constructed and maintained to prevent the entrance or existence of rodents and insects at all times. An exterior openings shall be effectively screened during the fly season. Screen doors shall open outward. All screening shall have at least sixteen (16) mesh per inch.

B. The roof, exterior walls, doors, sky lights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.

C. The exterior of the site shall be free from hazards and also from the accumulation of ~~waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other fitter.~~ litter.

D. Floor and wall surfaces of bathrooms, kitchens, and soiled utility rooms shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.

E. Basements shall be of such construction that they can be maintained in a dry and sanitary condition.

F. Main entrance areas shall open into general or group function areas, usually living rooms, ~~not into private~~

~~or more specific function areas, i.e., bedrooms or quiet space areas.~~

G. The group home facility must be handicapped accessible. The entrance and circulation areas shall meet appropriate American National Standards Institute ('A.N.S.I.') standards and all other State and Federal standards.

H. One of the main points of entry for the facility shall provide entry closet capacity for outdoor and foul weather clothing.

L. Traffic to and from any room shall not be through a bedroom bathroom, utility room or kitchen except where a utility room, toilet room or bathroom opens directly off the room it serves.

#### 62.404 Plumbing:

The plumbing shall meet the requirements of all municipal or county codes. Where there is no local law, the provisions of the Division of Public Health Sanitary Plumbing Code shall prevail.

#### 62.405 Heating Ventilation and Air Conditioning:

A. The heating equipment for all living and sleeping quarters shall be adequate, safe, protected, and easily controlled. It shall be capable of maintaining the temperature in each room used by residents at a minimum of 72°F (21°C). Portable heating devices shall not be used.

B. The group home must be adequately ventilated. Air conditioning equipment must be adequate and capable of maintaining the temperature in each room used by residents between 72°F - 82°F.

#### 62.406 Lighting:

Each room must be suitably lighted at all times for maximum safety, comfort sanitation and efficiency of operation. A minimum of 30 foot candles of light shall be provided for all working and reading surfaces, and a minimum of 10 foot candles of light on all other areas. This includes hallways, stairways, storerooms and bathrooms.

#### 62.407 Safety Equipment:

A. To prevent slipping, staircases shall have stair treads and sturdy handrails.

~~B. Stairways, ramps and open-sided porches shall have adequate lighting and handrails.~~

~~C. Hallways shall have night lights.~~

B. Floor surfaces, especially in heavy traffic areas shall be durable, yet non abrasive and slip-resistant. Area rugs on hand finished floors shall have a non skid backing. Carpeting shall be maintained in a clean and slip-resistant condition.

C. All doors for areas used by residents shall be capable of being opened from both sides.

#### 62.408 Bedrooms:

~~A. Each room shall be well lighted and well ventilated.~~ Each room shall be an outside room with at least one (1) window opening directly to the outside. The windowsill shall be at least three (3) feet above the floor and

above grade. Windows shall be constructed to allow a maximum of sunlight and air, to eliminate drafts, and be easy to open and close. Window area shall be no less than the equivalent of one-tenth (1/10) of the floor space.

B. Bedrooms for one (1) person shall be at least 100 square feet in size; and bedrooms for more than one (1) person shall provide at least 80 square feet of floor space per person and be adequately spaced for resident care. (Minimum room areas are exclusively of toilet rooms, closets lockers, wardrobes, alcoves or vestibules). The ceiling shall not be less than seven (7) feet from the floor.

C. Each bedroom is to have walls that go to the ceiling and a door that can be closed.

D. Adequate electrical outlets shall be conveniently located in each room and each room shall have general lighting and night lighting. A reading light shall be provided for each resident. At least one light fixture shall be switched at the entrance to each bedroom.

~~E. Walls shall be finished in colors which are light and cheerful.~~

F. E. Facilities shall ensure adequate privacy and separation of sexes in sleeping arrangements except in cases of husband or wife or other long term consensual partnership arrangements.

G. E. If bedroom doors of residents are locked by residents for privacy reasons, all persons on duty must carry a master key for these locks.

H. G. Bedrooms shall accommodate no more than two residents per room.

I. H. Bedrooms shall contain a separate bed of proper size and height for each resident.

J. I. Each resident shall be provided with at least one chair, chest-of-drawers, closet space with a clothes rack and shelves, and a mirror.

~~K. Bedroom furniture and closets shall have sufficient space to provide readily accessible storage for the resident's personal possessions and clothes.~~

L. J. Bedroom windows shall have window treatment(s) that close for privacy.

~~M. K. Bedrooms shall have closable doors that open directly into corridors or Hallways~~ Bedroom doors shall open directly into corridors or hallways.

#### 62.409 Bathrooms and Hand Washing Facilities:

A. At least one (1) window or mechanical ventilation to the outside shall be provided. ~~Floors shall not be slippery.~~

B. Bathroom design shall be handicapped accessible and meet appropriate American National Standards Institute (ANSI) Standards.

C. Toilets, showers, bathtubs and wash basins shall provide accessible traffic patterns for all resident rooms.

D. Toilets, bathing and toileting appliances shall be equipped for use by multiple handicapped residents.

E. There shall be at least one toilet of appropriate size for every four clients:

1. Each toilet shall be equipped with a toilet seat and toilet tissue.

~~2. Toilet tissue shall be readily accessible at each toilet.~~

~~3.~~ 2. Separate toilet facilities with hand washing must be provided for staff.

F. There shall be at least one hand washing sink for every four clients. Hand washing facilities shall be readily accessible to residents and staff. Hand washing facilities shall be provided in each resident room or located in an adjoining toilet room available at a reasonable distance from the resident room.

G. There shall be at least one tub or shower equipped with grip bars and slip resistant surfaces for every four residents. At least one shower must be handicapped accessible without curbs.

H. Wash basins shall be available in or immediately adjacent to bathrooms and toilet rooms.

~~I. Shower and tub areas shall be equipped with grab bars and slip resistant surfaces.~~

J. I. Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way to minimize the danger or breakage.

#### 62.410 Day Room and Dining Area:

B. A. There shall be at least 30 square feet per client within the house, not including client bedrooms, for recreation, dining and program activities.

A. B. When a multi-purpose room is used for dining and recreation, it shall have sufficient space to accommodate all activities and to prevent interference ~~with each other among activities.~~

C. Basement space may be used for recreation activities if there are a minimum of two fire exits.

D. Appropriate leisure and mealtime furniture, as well as comfortable seating shall be provided for each resident.

#### 62.411 Kitchen and Pantry/Storage Areas:

A. The kitchen shall provide sufficient space to carry out proper food preparation and dishwashing operations and shall have:

1. Walls, floors and counters with coverings which are easily cleaned and impervious to water ~~to the level of splash.~~ Food contact surfaces, utensils and equipment shall be of approved material, cleanable and shall be kept in good repair.

2. At least one (1) refrigerator in proper working order, capable of maintaining foods at 41°F, or below, as determined in the warmest part of the refrigerator, and one (1) freezing unit, in proper working order capable of maintaining frozen foods in a continuous frozen state.

3. At least one (1) four burner range and one (1) oven which are in proper working order.

4. A dishwasher shall be provided to effectively remove food sod and soaps or detergents from dishes, utensils and equipment used in food storage, preparation and service. The dishwasher must be supplied with hot water of 165°F. If a dishwasher is not used, dishes, equipment, and utensils shall first be washed, next rinsed, and then sanitized according to the following:

a. Immersion for at least one-half (1/2) minute in clean, hot water of a temperature of at least 170°F;

b. Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite (household bleach or the equivalent) and having a temperature of at least 75°F.

B. Cleaned dishes, utensils and equipment shall be stored in a clean dry area protected from contamination by splash, dust or other means.

#### 62.412 Sanitation and Housekeeping:

A. All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.

B. Policy manuals shall be prepared and followed which outline maintenance and cleaning procedures safe storage of cleaning materials and pesticides and other potentially toxic materials, and safe storage and handling of linen and other matters which pertain to the comfort and safety of the residents.

C. There shall be a minimum of three sets of towels, washcloths, sheets and pillowcases for each resident which shall be changed at least weekly or whenever soiled.

D. There shall be separate areas for storage of

1. Food items.
2. Cleaning agents, disinfectants and polishes.
3. Poisons, chemicals and pesticides.
4. Eating, serving and cooking utensils.

E. A ventilated janitors closet must be provided containing a service sink for storage and use of housekeeping items. ~~Chemicals and disinfection agents shall be stored separate from resident care items and food.~~

F. Laundry processing must limit the handling of laundry and must utilize universal precautions in the handling of all soiled laundry.

1. On-site laundry processing area must include:

a. One room with areas for receiving, sorting, and washing of soiled linen. Washers must be supplied with hot water of 160°F. Room must be properly ventilated with air flow under negative pressure in relation to adjacent areas.

b. One room for drying and folding of clean linen. Room must have hand washing immediately accessible and be properly ventilated with air flow under positive pressure in relation to adjacent areas.

2. Off-site laundry processing must comply with the following:

- a. A contract with a commercial laundry must be obtained for the proper processing of soiled linen.
- b. A property ventilated soiled linen holding room (ventilated directly outside, with an air flow under negative pressure) or a designated area in the soiled utility room shall be provided for the storage of soiled linen.
- c. A clean linen storage closet sufficient for the storage of clean linen must be provided.

G. Soiled utility room for storage of regulated infectious waste, sharps and disposal of body fluids must be provided and must contain a work counter, hand washing facilities, clinical sink or other bed pan cleaning device. This room must be property ventilated directly outside with air flow under negative pressure in relation to adjacent area (10 total air exchanges per hour).

62.413 Nursing Equipment and Supplies:

A. There shall be sufficient equipment and supplies for nursing care to meet the needs of each resident. It shall be the responsibility of the administrator to obtain specific items required for individual cases.

B. Over the bed tables shall be provided for residents who may not be able to be served a meal in the dining room.

C. There shall be sufficient space and facilities available for the proper cleansing, disinfection, sterilization (if done on premises) and storage of nursing supplies and equipment.

D. A call system shall be provided for each resident. This system shall be accessible to each bed, each toilet room bathroom and shower room used by residents.

E. The facility shall maintain a scale on the premises which can accommodate the physical condition of each resident.

F. The group home provider shall provide bag and mask for assisted ventilation.

### SECTION 62.5 FIRE SAFETY

62.501 Fire safety in group homes shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for a license or renewal of a license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of noncompliance with the Rules and Regulations of the State Fire Prevention commission shall be grounds for revocation of a license.

62.502 There must be sufficient staff (a minimum of two) awake and on duty at all times including the night shift, to evacuate all residents in case of fire. More than two staff shall be on duty at all times if the Fire Marshal determines that more staff is required to evacuate residents timely in

case of fire. However, should all residents be ambulatory and capable of self-evacuation, only one nursing service personnel shall be required on duty at all times.

62.503 Residents and all staff on each shift shall be trained in executing the evacuation plan.

62.504 Evacuation drills must be held at least quarterly on each shift for all staff and residents.

### SECTION 62.6 PERSONNEL/ADMINISTRATIVE

62.601 There must be a licensee of the facility. The licensee must:

A. Exercise general policy, budget, and operating direction over the facility;

B. Appoint the administrator of the facility who shall have:

1. An associates degree or higher from an accredited college or university plus three (3) years experience in a health or human services field; or

2. A bachelor's degree or higher in a health, business, or related field and a minimum of one year's work experience in a health or human service field.

C. Insure all operations of the group home facility are conducted in accordance with these regulations and applicable Federal, state and local laws and requirements.

62.602 The licensee and the administrator shall be responsible for complying with the regulations herein contained. In the absence of the administrator, a qualified substitute shall be authorized, in writing, to be in charge.

62.603 The administrator must be on duty and on site in the home a minimum of four (4) hours a day, five (5) days a week.

62.604 In addition to the staff engaged in the direct care and treatment of residents, there must be sufficient personnel to provide basic services such as: food service, laundry, housekeeping and plant maintenance. Nursing service personnel shall not be engaged in food service, laundry, housekeeping and plant maintenance.

62.605 All personnel shall submit to and pass a criminal background check and drug testing in accordance with Title 16 Del. C., Chapter 11, Subchapter IV., Criminal Background Checks and Mandatory Drug Testing.

~~62.605~~ 62.606 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a ~~crime where the victim was a person regardless of whether the crime was a felony or a misdemeanor.~~ disqualifying crime as set forth in the Criminal Background Check regulations of the Division of Long Term Care Residents Protection.

~~62.606~~ 62.607 The facility shall have written personnel policies and procedures that adequately support sound resident care. Personnel records of each employee shall be kept current and available upon request by the Division of ~~Public Health~~ representatives and shall contain sufficient information to support placement in the positions

to which assigned.

~~62.607~~ 62.608 Minimum requirements for employee physical examinations include:

~~A. Each person, including volunteers, who is involved in the care of residents shall have a screening test for tuberculosis as a prerequisite to employment and annually thereafter. Either a negative intradermal skin test or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to residents.~~

~~B. A report of this test shall be on file at the facility of employment.~~

A. The facility shall have on file results of tuberculin tests performed annually for all employees, including volunteers who are involved in the care of residents. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

B. Employees who do not have a significant reaction to the initial tuberculin test (those individuals who have less than 10 mm induration) should be retested within 7 – 21 days to identify those who demonstrate delayed reactions. Tests done within one year of a previous test need not be repeated in 7 –21 days.

C. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care and service to residents.

~~62.608~~ 62.609 Each applicant of a group home must have a medical evaluation for tuberculosis before being admitted to a group home. Any resident found to have active tuberculosis in an infectious stage may not be admitted or continue to reside in a group home.

~~62.609~~ 62.610 The licensee shall approve written policies and procedures pertaining to the services the group home provides. Such policies and procedures should reflect the philosophy and objectives of the home to provide on a continuing basis good medical, nursing and psychosocial care for all persons admitted to the home who require such care. Such policies and procedures shall reflect the requirements of Section 62.7 and include:

- A. Admission, transfer and discharge policies
- B. Categories of residents accepted or not accepted
- C. Physician services

- D. Nursing services
- E. Food and nutrition services including kitchen sanitation, food handling and storage
- F. Rehabilitative services
- G. Pharmaceutical services
- H. Diagnostic services
- I. Housekeeping services
- J. A written policy and procedure denoting care of residents
  1. In an emergency
  2. During a communicable disease episode
  3. In case of critical illness or mental disturbance
- K. Dental services
- L. Social services
- M. Resident activities, recreational, social, religious
- N. Clinical records
- O. Fire and safety policies
- P. Advance directives to include:
  1. On admission, inform residents in writing of their right 1) to accept or refuse treatment, 2) to give written instructions concerning their care and 3) to appoint an agent or proxy to make health care decisions.
  2. Documenting in medical records whether or not residents have executed advance directives.
  3. Ensuring compliance with requirements of state law on advance directives.
  4. Providing education for staff on issues concerning advance directives.
- Q. Infection control.

#### **SECTION 62.7 SERVICES TO RESIDENTS**

##### **62.701 Group Home Services:**

A. The group home, shall provide to all residents the care deemed necessary for their comfort, safety nutritional requirements and general well being

B. The group home shall have in effect a written transfer agreement with one (1) or more hospitals, which provides the basis for an effective working arrangement under which inpatient hospital care, or other hospital services, are available promptly to the facilities residents, when needed.

C. The group home shall have a written contract agreement for promptly obtaining required laboratory, x-ray and other diagnostic services. These services may be obtained from other facilities that meet applicable local, state and Federal laws and regulations.

D. The group home shall have arrangements for the provision of all other services and supplies to meet the health and psychosocial needs of each resident. Such arrangements may be other met by appropriately licensed facility staff or by contractual agreements with organizations or individuals licensed as applicable by the State of

Delaware.

E. The group home shall immediately inform the attending or emergency physician, ~~his designee~~, registered nurse ~~or contracting agency providing nursing services to the resident~~, and if known, notify the resident's legal representative, interested family member, or other parties as designated by the resident when there is:

- a) an accident involving the resident.
- b) a significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental or psychosocial status in either life threatening conditions or clinical complications);
- c) a need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment).

#### 62.702 Medical and Nursing Services:

A. The group home shall provide for medical and nursing services either directly or through contract arrangements with organizations or individuals licensed as applicable by the State of Delaware.

B. All persons admitted to a group home shall be under the care of a licensed physician and shall be seen by their attending physician at least every 30 days, unless Justified otherwise and documented by the attending physician.

C. All group homes shall arrange for one (1) or more licensed physicians to be called in an emergency. Names and phone numbers of these physicians shall be posted in a conspicuous location.

D. All orders for medications, treatments, diets, and diagnostic services shall be in writing and signed by the attending physician. Telephone orders shall be countersigned by the physician within fourteen (14) working days.

E. All statements of medical treatment goals and treatment plans shall be reviewed and updated as needed by the attending physician, to insure continuing appropriateness of the goals, consistency of management methods with the goals and the achievement of progress towards the goals.

F. A progress note shall be written and signed by the physician if he/she makes an on-site visit.

~~G. All telephone orders shall be accepted in the group home by a licensed nurse and shall be counter signed by the physician within five (5) working days.~~

H. G. The nursing services provided either directly or through contractual arrangements include:

1. An assessment of the resident upon admission, by a registered nurse and development of written resident care plans in conjunction with the physician and other professionals as needed.

a) Individual written resident care plans to meet the resident's needs shall be developed within seven (7) days of admission and reviewed at least every 62 days by registered nurses and other professional disciplines, as

required.

b) In the event that there is a significant change in the resident's medical or psychosocial condition the care plan shall be modified to meet the needs of the resident.

2. The coordination and monitoring of resident care and services with the physician and other health professionals by a registered nurse who visits the group home at least weekly.

3. A supervisory visit to the group home at least every two weeks by a registered nurse who conducts an assessment of the care provided by the certified nurse assistants.

4. The administration of treatments and medications by licensed nurses in accordance with the Nurse Practice Act.

~~H. H.~~ There must be a sufficient number of trained personnel to provide for direct care of residents with a minimum of two (2) nursing service personnel on duty at all times. However, should all residents be ambulatory and capable of self-evacuation, only one nursing service personnel shall be required on duty at all times. Each nurse assistant employed by the group home shall have met the training and testing requirements for certification and be registered in good standing on the Delaware Nurse Aide Registry.

#### 62.703 Infection Control:

##### A. Prevention and Control Services

The facility shall establish and implement an infection prevention and control program. The Administrator shall ensure the development and implementation of the program.

The facility shall establish and implement written policies and procedures regarding infection prevention and control including, but not limited to:

1. Universal Precautions as established by the Centers for Disease Control and Prevention (CDC).

~~2.~~ 2. A system for investigating, reporting, and evaluating the occurrence of all infections, diseases, or conditions which are reportable to the Division of Public Health that may be related to staff activities and procedures of the facility;

~~3.~~ 3. Notifiable diseases shall be reported to the County Public Health Administrator;

~~4.~~ 4. Care of residents with communicable diseases;

~~5.~~ 5. Policies and procedures for exclusion from work and authorization to return to work for personnel with communicable diseases;

~~6.~~ 6. Surveillance techniques to minimize sources and transmission of infection;

~~7.~~ 7. Disinfection, cleaning and care practices and techniques used in the facility including, but not limited to the following:

a) Care of utensils, instruments, solutions, dressings, articles and surfaces;

b) Selection, storage, use and disposition of disposable and non-disposable resident care item;

c) Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates;

d) Procedures for care of equipment and other devices that provide a portal of entry for pathogenic micro-organisms;

e) Techniques to be used during each resident contact including hand washing before and after caring for a resident;

f) Criteria and procedures for isolation of residents.

g) All personnel shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program

**B. Infectious Disease and Waste Removal**

The facility shall establish and implement policies and procedures for the collection, storage, handling and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling and disposition of all pathological and infectious wastes to be removed from the facility, including, but not limited to the following:

1. Needles and syringes and other solid, sharp, or rigid items shall be placed in a puncture resistant container and incinerated or compacted prior to disposal.

2. Needles and syringes shall be destroyed or disposed of in a safe and proper manner by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control.

3. Non-rigid items, such as blood tubing and disposable equipment and supplies, shall be incinerated or placed in double, heavy duty, impervious plastic bags and disposed of by an infectious waste hauler approved by the Department of Natural Resources and Environmental Control.

4. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into, the sewage system or otherwise disposed of in accordance with federal, state and local standards or regulations.

5. All pathology specimens, tissue and waste, including gross and microscopic tissue removed surgically or by any other procedure and products of conception must be disposed of in compliance with OSHA (Occupational Safety and Health Administration), EPA (Environmental Protection Agency), DNREC (Department of Natural Resources and Environmental Control) and other state and local standards covering the treatment of medical waste.

6. Collection, storage, handling and disposition procedures of all pathological and infectious wastes within the facility shall meet the of all state and

federal codes.

**62.704 Medications:**

A. All medication administered to residents shall be ordered in writing, dated and signed by the attending physician. All prescription medications shall be properly labeled in accordance with ~~Title 24 of the Delaware Pharmacy Laws and Regulations~~, 24 Del. C., Chapter 25 and the regulations of the Delaware Board of Pharmacy. The label shall contain the following information:

1. The prescription number;
2. The date such drugs were originally dispensed to the resident;
3. The resident's full name;
4. The brand or established name and strength of the drug to the extent that it can be measured;
5. The physician's directions as found on the prescription;
6. The physician's name;
7. The name and address of the dispensing pharmacy or physician.

B. Medications may be self-administered or administered in accordance with the Nurse Practice Act. Those residents who, upon admission, are incapable of self-administration or who become incapable of self-administration will have the medications administered according to the Nurse Practice Act.

C. The group home provider licensee shall maintain a record of all medication provided to a resident indicating time of day, type of medication, dose, route of self-administration/administration, by whom given and any reactions noted.

**D. Medication Storage**

1. Provisions for the locked storage of medications shall be provided. Medication storage area shall contain a work counter, refrigerator and hand sink. The key to the medication storage must be in the possession of or accessible only to personnel responsible for the distribution for self-administration/administration of medications. If secure storage of medications is provided in resident rooms for those residents capable of self-administration the key to the medication storage must be in the possession of the resident.

a) No stock supplies of drugs except those approved for the emergency drug kit and those commonly available without prescription (non-legend drugs), e.g., antacids, aspirin, laxatives, shall be kept in the facility.

b) Prescription medication not requiring refrigeration shall be kept in the original container stored in a locked cabinet or drawer, and clearly labeled for the specific resident. These medications shall be stored within the U.S.P. recommended temperature range of 59 - 86°F unless the manufacturer's labeling suggests otherwise.

c) Prescription medication requiring

refrigeration shall be stored in a separate and secure locked container within the refrigerator. The temperature range must be maintained within U.S.P. requirements.

d) Schedule II substances/prescriptions shall be kept in separately locked, securely fixed boxes or drawers in the locked medication cabinet; hence, under two (2) locks.

Schedule II substances shall be handled in the manner outlined by the State and Federal laws and regulations. AD unused Schedule 11 substances shall be returned to the pharmacist for disposition.

e) Internal medications shall be stored separately from external medications.

2. The group home provider shall insure that prescription medication is not used by other than the resident for whom the medication was prescribed.

3. The group home provider is responsible for maintaining an adequate supply of medication at all times.

4. Prescription medication which is no longer needed by a resident shall be disposed of by a physician, pharmacist or other designee who must be a licensed medical professional in accordance with Delaware ~~Pharmaceutical Board of Pharmacy~~ Regulations. All unused portions of any resident's discontinued or expired prescriptions shall be immediately isolated and destroyed or returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours. The appropriate notation of such return or destruction, providing a quantity, description and date on the resident's medical administration record shall be provided. The person performing the return or destruction shall initial this document.

5. The facility may keep on the premises an emergency drug kit with quantities of medications approved by the Board of Pharmacy. These medications shall only be used by licensed physicians or licensed nurses in an emergency situation. Stocking of this kit shall be arranged with a pharmacist who checks the contents after use and/or periodically.

#### 62.705 Food Service:

A. A minimum of three (3) meals or equivalent shall be served in each twenty-four (24) hour period. Meals shall be served at regular times comparable to normal mealtimes in the community. There must not be more than a fourteen (14) hour span between the evening meal and breakfast.

B. Meals shall provide nutrients and calories for each resident based upon compliance with current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, except as ordered by a physician.

C. Food preparation methods that conserve nutrients shall be utilized. Excessive exposure to light, prolonged storage, and prolonged cooking in a large quantity

of water shall be avoided.

D. Food shall be prepared so that it will have an appetizing aroma and appearance. Food shall be held and served at proper temperatures in accordance with the ~~U.S. Department of Health and Human Services! Food Code.~~ current Delaware Food Code.

E. Food shall be prepared in a form designated to meet individual needs.

F. When residents refuse food served, substitutes of similar nutritive value shall be offered.

G. Bedtime snacks shall be offered routinely to all residents to the extent medical orders permit.

H. Diets and nutritional supplements shall be saved as prescribed by the physician. Meal and supplement intake shall be monitored by nursing service personnel and recorded in each resident's clinical record.

I. A copy of a recent diet manual shall be available for planning therapeutic menus and as a resource.

J. Menus shall be planned in advance and a copy of the current week's menus shall be posted in the kitchen and in a public area.

1. Portion sizes shall be listed on a menu in the food service area.

2. The names of fruit, vegetables or starch shall be specified on the menu (for example: orange juice, green beans, rice).

3. All menus, both regular and therapeutic, shall be approved by the dietitian.

K. Menus showing food actually served each day shall be kept on file for at least one (1) month. When changes in the menu are necessary, substitutions of similar nutritive value shall be provided.

L. A three (3) day supply of food shall be kept on the premises at all times.

~~M. Food shall be from approved sources. The use of home-canned foods is prohibited.~~

N. M. A suspected occurrence of food poisoning shall be reported immediately, by telephone, to the County Public Health Administrator.

#### 62.706 Nutrition Services

A. The facility must employ a dietitian directly or through contractual arrangements, either full time, part time or on a consultant basis, and provide on-site services to residents as needed.

B. The immediate nutritional needs of residents shall be addressed upon admission with consultation by the dietitian as needed. A comprehensive nutritional assessment which includes height and weight and an evaluation of calories, protein and fluid requirements shall be completed by the dietitian and updated and reviewed as indicated by the resident's condition.

C. The facility shall obtain residents' weights monthly or more often as needed.

D. Weight changes of 5 pounds or 5% of body

weight in one month shall be reported to the physician and dietitian.

~~62.707 Abuse, Neglect or Mistreatment of Residents~~

~~A. The group home A" follow all requirements set forth in subchapter III of the Delaware Code titled Abuse, Neglect or Mistreatment of Patients or Residents (16 Del.C. § 1131. et seq.). The facility shall report incidents of abuse, neglect or mistreatment of residents to the Department of Health and Social Services as set forth in the Rules and Regulations Governing Delaware's Patient Abuse Law.~~

~~B. In addition the group home shall immediately report to the Office of Health Facilities Licensing and Certification alleged violations regarding abuse, mistreatment, neglect, injuries of unknown origin and misappropriation of property. These incidents shall be thoroughly investigated by the group home and the results of the thorough investigation shall be reported to the Office of Health Facilities Licensing and Certification, within 5 days of the alleged incident.~~

~~62.708~~ 62.707 Records and Reports:

A. There shall be a separate clinical record maintained at the group home on each resident which shall be a chronological history of the resident's stay in the group home. Each resident's records shall contain:

1. Admission record: Including resident's name, birth date, home address prior to entering the facility, identification numbers, such as social security, Medicaid, Medicare, date of admission, physician's name, address and phone number, admitting diagnosis, next of kin (relationship, name, address and phone number).

2. History and physical examination: Prepared by physician within seven (7) days of the resident's admission. A summary and history which was prepared at the hospital and the resident's physician examination which was performed at the hospital, if performed within seven (7) days prior to admission to the home, may be substituted. Additionally, a record of an annual medical evaluation performed by a physician must be contained in each resident's file.

3. Statement of complete diagnosis and prognosis.

4. Physician's orders shall include:

a) Complete list of medications, medication name, dosage, frequency and route of administration, indication for usage;

b) If "as needed" medications are ordered, the reason why the resident takes the medication and the maximum dose in a 24 hour period;

c) Treatments, diets and level of permitted activity.

5. Physician's progress notes with each on-site visit. If medical services are obtained in the physician's office a summary including diagnosis and prognosis, changes in medication mid therapy and necessary

follow-up will be provided.

6. Nursing notes, shall be recorded by each person providing professional nursing services to the resident, indicating date, time, scope of service provided and signed by the provider of the service.

7. Medication sheets: Including medication, name, dosage, frequency and route of administration, space for the resident to record his/her initials if medication is self-administered or for recording the initials of the medical professional authorized and responsible for administration of the medication.

8. Inventory of personal effects both upon admission and at time of transfer and/or discharge.

9. For discharged or transferred residents, the records shall contain the following:

a. A discharge summary containing the:

1. Date and time of discharge,

2. Place to which the resident was

discharged;

3. Condition of resident at time of

discharge.

b. The resident's written consent for discharge or discharge order from the resident's physician.

c. Copies of the name of the resident's guardian, powers of attorney and advance directives, if applicable.

10. Special service notes: e.g., social services and activities, results of special consultations, requested by the physician such as physical therapy, dental and podiatry if services are provided in the group home.

11. Nutrition progress notes.

12. Copy of an interagency transfer form if the resident was admitted from an acute care facility or any other long term care facility or transferred to an acute care or other type of health care facility.

~~13. Advance Directives: any written advance directives signed by residents shall accompany the resident upon transfer to another health care facility.~~

~~14. 13.~~ Documentation of the percentage of intake for each meal.

~~15. 14.~~ Recording of weights obtained including the date the weight was obtained.

~~16. 15.~~ Laboratory work, special tests, and x-rays ordered by the physician.

B. Records shall be available at all times to legally authorized persons; otherwise, such records shall be held confidential.

C. Clinical records shall be retained for five (5) years from the date of discharge.

D. Should the facility cease operation, all resident records shall be transferred with the resident to another home or facility, with written receipt acknowledging the transfer which shall be signed by the resident and the new administrator.

E. If a facility ceases operation, arrangements, shall be made to retain discharge records for five (5) years following closure.

F. ~~Incident/accident reports, with adequate documentation & shall be completed for each accident, injury or unusual incident. Adequate documentation shall consist of the name of the resident(s) involved, a description of the accident, injury or unusual incident, a list of the parties involved, the nature of any injuries, the location of the accident (on the premises or off), time of injury, disposition of resident(s) and notice that physician and family have been contacted. Incident/accident reports shall be kept on file in the facility. A copy shall be included in the residents clinical record. Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.~~

Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; phone number: 1-877-453-0012; fax number: 1-877-264-8516.

## SECTION 62.8 WAIVER OF STANDARDS

62.801 Specific standards may be waived by the Division of Public Health provided that each of the following conditions are met:

1. A. Strict enforcement of the standard would result in unreasonable hardship on the group home.

2. B. The waiver is in accordance with the particular needs of any resident of the group home.

3. C. A waiver must not adversely affect the health, safety, welfare, or rights of any resident of the group home.

4. D. The request for a waiver must be made to the Division of Public Health in writing by the group home with substantial detail justifying the request.

5. E. Prior to filing a request for a waiver, the facility shall provide written notice of the request to each resident, each court-appointed guardian of any resident, each person appointed in the durable power of attorney of any resident, each person appointed to be any resident's health care agent under the Death with Dignity Act and each spouse and adult child of any resident. Prior to filing a request for a waiver, the facility shall also provide written notice of the request to the Office of Long Term Care Ombudsman. The notice shall state that the recipient has the right to object to the waiver request in writing to the Division. of Public

Health:

Upon filing the request for a waiver, the group home shall submit to the Office of Health Facilities Licensing and Certification a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The facility shall maintain proof of the method by which the requirement was met by the group home for the duration of the waiver and make such proof available upon the request of the Division of Public Health or its agents.

6. F. A waiver granted by the Division of Public Health is not transferable to another group home in the event of a change of ownership.

7. G. A waiver shall be granted for a period up to the term of the license.

## APPENDIX A

~~These regulations are adopted by the Director, Division of Public Health pursuant to 16 Del. C. 1121, 1122, 1123.~~

## PATIENT'S BILL OF RIGHTS

### RESPECT

1. ~~Every patient and resident shall be treated with consideration, respect and full recognition of their dignity and individuality.~~

2. ~~Every patient and resident shall receive care, treatment and services which are adequate and appropriate.~~

### SERVICES AND PAYMENT

3. ~~Each patient and resident and their families shall, prior to or upon admission, and during their stay, receive a written statement of the services provided by the facility including those required to be offered on an "as-needed" basis.~~

A. ~~They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the facility's basic per them rate.~~

B. ~~Upon receiving such statement, the patient and his representative shall sign a written receipt which shall be retained by the facility.~~

### TREATMENT

4. ~~Each patient shall receive from the attending physician or resident physician of the facility, in lay terms, complete and current information regarding his diagnosis, treatment and prognosis, unless medically inadvisable.~~

5. ~~Each patient and resident:~~

A. ~~Shall participate in the planning of their medical treatment;~~

B. ~~May refuse medication or treatment;~~

C. ~~Shall be informed of the medical consequences of all medication and treatment alternatives; and~~

D. Shall give prior informed consent to participation in any experimental research, which shall be verified by his signature and the signature of a family member or representative.

6. The facility shall see to it that the name, address and telephone number of the patient or resident's physician is readily accessible to them at their bedside.

7. Each patient and resident's medical care program shall be conducted discreetly and in accordance with the patient's need for privacy.

A. Persons not directly involved in patient care shall not be present during medical examinations, treatment and case discussion.

B. Personal and medical records shall be treated confidentially; shall not be made public without the consent of the patient or resident; shall not be released to any person inside or outside the facility who has no demonstrable need for such records.

8. Every patient and resident shall be free from mental and physical abuse and also from chemical and physical restraints, unless authorized by a physician according to clear and indicated medical requirement.

#### COMMUNICATIONS

9. Every patient and resident shall receive from the Administrator or staff of the facility a courteous and reasonable response to his requests.

10. Every patient and resident shall be provided with information as to any relationships of the facility to other health care facilities as far as the patient's care is concerned.

11. To maintain reasonable continuity of care, every patient and resident at the least shall be informed of the availability of physicians and appointment times.

12. Every patient and resident may associate privately with people and groups of his own choice at any reasonable hour.

A. May send and receive mail promptly and unopened.

B. Shall have access to any reasonable hour to a telephone where he may speak privately.

C. Shall have access to writing instruments, stationery and postage.

#### CONTROL OF FINANCIAL AFFAIRS

13. Each patient and resident has the right to manage his own financial affairs.

A. If, by written request, the facility manages the patient's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement upon request to the patient or a designated representative.

B. The patient and resident shall have unrestricted access to such accounts at reasonable hours.

#### PRIVACY

14. If married, every patient and resident shall enjoy privacy in visits by his spouse and, if both reside in the facility, they shall be allowed to share a room, unless medically contraindicated.

15. Every patient and resident has the right of privacy in their room and the facility's staff shall respect this right by knocking on the door before entering the room.

#### GRIEVANCES

16. Every patient and resident has the right, personally, or through others, to present grievances to the Division of Aging, the Ombudsman or to others.

A. There shall be no reprisal, restraint, interference, coercion or discrimination of the patient as a result of such grievance or suggestion.

B. Any alleged violation of any of the provisions of these Rules and Regulations should be presented orally or in writing and forwarded to the attention of the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and the institution to resolve the matter. In any case, the confidentiality of the complainant shall not be revealed without his/her consent.

D. On completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the facility wherein the complaint originated.

E. If the grievance is not resolved at the end of the investigation by the Ombudsman, the grievance findings shall be forwarded to the State Board of Health for appropriate action after obtaining the consent of the complainant.

#### PERSONAL CHOICE/PERSONAL PROPERTY

17. A patient or resident shall not be required to perform services for the facility.

18. Every patient and resident shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to have security in their storage and use.

#### TRANSFERS/DISCHARGES

19. No patient or resident, shall be transferred or discharged from a facility except for the following:

A. For medical reasons;

B. For the patient's own welfare or the welfare of the other patients; and

C. For non-payment of justified charges.

20. If good cause exists, the patient or resident shall be given 30 days advance notice of the proposed action and the reasons for the action and may request an impartial hearing.

In emergency situations, such notice need not be given.

21. If a hearing is requested, it shall be held within ten (10) working days of the request. The hearing shall be conducted by the Division of Public Health. Hearing officers could include:

- A. Nursing Home Ombudsman;
- B. A staff member of the advocacy section, Division of Aging;
- C. A physician from the Division of Public Health, not employed by a hospital operated by the Division;
- D. The licensure program director for the type of home involved.

The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

22. If the hearing determines in favor of the patient, the home shall be instructed to comply. If the home refuses to comply, the matter will be referred to the Attorney General's Office to see if further action is called for or permissible under the law.

#### DEVOLUTION OF RIGHTS

Where consistent with the above rights, all rights, particularly as they pertain to a patient adjudicated incompetent, a patient determined to be medically incompetent by his attending physician or a patient unable to communicate, shall devolve to that patient's next of kin, guardian, representative, sponsoring agency or representative payee (except where the facility is the representative payee):

#### NOTICE - AWARENESS OF RIGHTS

I. These provisions shall be posted conspicuously in a public place in each facility.

II. Copies are to be furnished to the patient or resident upon admission and to all current patients and residents and next of kin, guardian, representative, sponsoring agency or two representative payee.

III. Receipts for the statement signed by the above parties shall be retained in the facilities files.

Revised May 27, 1982

#### APPENDIX B Notifiable Diseases

- |  |                         |
|--|-------------------------|
| 1. Acquired Immune Deficiency Syndrome | 41. Rubella             |
| 2. Amebiasis                           | 42. Rubella, Congenital |
| 3. Anthrax                             | 43. Salmonellosis       |
| 4. Botulism                            | 44. Shigellosis         |
| 5. Brucellosis                         | 45. Smallpox            |
| 6. Campylobacteriosis                  | 46. Syphilis            |
| 7. Chancroid                           | 47. Tetanus             |

- |  |                                  |
|--|----------------------------------|
| 8. Chlamydia trachomatis infections    | 48. Toxic Shock Syndrome         |
| 9. Cholera                             | 49. Trichinosis                  |
| 10. Condylomata acuminata              | 50. Tuberculosis                 |
| 11. Diphtheria                         | 51. Tularemia                    |
| 12. Enecephalitis                      | 52. Typhoid Fever                |
| 13. Foodborne Disease Outbreaks        | 53. Typhus Fever                 |
| 14. Giardiasis                         | 54. Vaccine Adverse Reactions    |
| 15. Gonococcal Infections              | 55. Waterborne Disease Outbreaks |
| 16. Granuloma Inguinale                | 56. Yellow Fever                 |
| 17. Hansen's Disease (Leprosy)         |                                  |
| 18. Hepatitis (Viral all types)        |                                  |
| 19. Herpes                             |                                  |
| 20. Histoplasmosis                     | Also, any unusual disease and    |
| 21. Human Immunodeficiency Virus (HIV) | adverse reaction to vaccine.     |
| 22. Influenza                          |                                  |
| 23. Lead Poisoning                     |                                  |
| 24. Legionnaires Disease               |                                  |
| 25. Leptospirosis                      |                                  |
| 26. Lyme Disease                       | County Health Offices:           |
| 27. Lymphogranuloma Venereum:          |                                  |
| 28. Malaria                            | New Castle County 9958632        |
| 29. Measles                            |                                  |
| 30. Meningitis (Bacterial)             | Kent County 7395305              |
| 31. Meningitis (Aseptic)               |                                  |
| 32. Meningococcal Disease (Other)      | Sussex County 8565355            |
| 33. Mumps                              |                                  |
| 34. Pertussis                          |                                  |
| 35. Plague                             |                                  |
| 36. Poliomyelitis                      |                                  |
| 37. Psittacosis                        |                                  |
| 38. Rabies (man, animal)               |                                  |
| 39. Reye's Syndrome                    |                                  |
| 40. Rocky Mountain Spotted Fever       |                                  |

#### PART II APPENDIX A Notifiable Diseases

- |  |   |
|--|---|
| <u>Acquired Immune Deficiency Syndrome (S)</u> | <u>Malaria</u>  |
| <u>Anthrax (T)</u>                             | <u>Measles(T)</u>   |
| <u>Botulism (T)</u>                            | <u>Meningitis (all types other than meningoccal)</u>  |
| <u>Brucellosis</u>                             | <u>Meningococcal infections (all types) (T)</u>   |
| <u>Campylobacteriosis</u>                      | <u>Mumps (T)</u>  |
| <u>Chancroid (S)</u>                           | <u>Chlamydia trachomatis infections(S) Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)</u> |
| <u>Cholera</u>                                 | <u>Pertussis (T)</u>  |
| <u>Cryptosporidiosis</u>                       |   |
| <u>Cyclosporidiosis</u>                        |   |
| <u>Diphtheria (T)</u>                          |   |

<u>E. Coli 0157:H7 infection (T)</u>	<u>Plague (T)</u>
<u>Encephalitis</u>	<u>Poliomyelitis (T)</u>
<u>Ehrlichiosis</u>	<u>Psittacosis</u>
<u>Foodborne Disease Outbreaks (T)</u>	<u>Rabies (man, animal)(T)</u>
<u>Giardiasis</u>	<u>Reye's Syndrome</u>
<u>Gonococcal infections (S)</u>	<u>Rocky Mountain</u>
<u>Granuloma Inguinale (S)</u>	<u>Spotted Fever</u>
<u>Hansen's Disease (Leprosy)</u>	<u>Rubella (T)</u>
<u>Hantavirus infection (T)</u>	<u>Rubella (congenital)(T)</u>
<u>Hemolytic uremic syndrome (HUS)</u>	<u>Salmonellosis</u>
<u>Hepatitis A (T)</u>	<u>Shigellosis</u>
<u>Hepatitis B (S)</u>	<u>Smallpox (T)</u>
<u>Hepatitis C &amp; unspecified</u>	<u>Streptococcal disease</u>
<u>Herpes (congenital) (S)</u>	<u>(invasive group A)</u>
<u>Herpes (genital) (N)</u>	<u>Streptococcal toxic</u>
<u>Histoplasmosis</u>	<u>shock syndrome (STSS)</u>
<u>Human Immunodeficiency</u>	<u>Syphilis (S)</u>
<u>Virus (HIV) (N)</u>	<u>Syphilis (congenital) (T)</u>
<u>Human papillomavirus</u>	<u>Tetanus</u>
<u>(genital warts) (N)</u>	<u>Toxic Shock Syndrome</u>
<u>Influenza (N)</u>	<u>Trichinosis</u>
<u>Lead Poisoning</u>	<u>Tuberculosis</u>
<u>Legionnaires Disease</u>	<u>Tularemia</u>
<u>Leptospirosis</u>	<u>Typhoid Fever (T)</u>
<u>Lyme Disease</u>	<u>Vaccine Adverse</u>
<u>Lymphogranuloma Venereum (S)</u>	<u>Reactions</u>
	<u>Varicella</u>
	<u>Waterborne Disease</u>
	<u>Outbreaks (T)</u>
	<u>Yellow Fever (T)</u>

Also, any unusual disease and County Health Offices:  
adverse reaction to vaccine New Castle County 995-8632  
Kent County 739-5305  
Sussex County 856-5355

(T) report by rapid means  
(N) report in number only when so requested

For all diseases not marked by (T) or (N):

(S) – sexually transmitted disease, report  
required in 1 day

Others – report required in 2 days

### **APPENDIX B**

#### **DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED**

Staphylococcus aureus intermediate or resistance to  
Vancomycin (MIC > 8 ug/ml)

Streptococcus pneumoniae drug resistant, invasive disease

### **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE** **Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Section 9089 regarding Delaware's A Better Chance (DABC) and/or General Assistance (GA) Food Stamp Households. Summary of change: removes language about shortening of certification periods, which are no longer allowed. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by September 30, 2001.

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.

### **REVISION**

#### **7004.3 DABC and/or GA Food Stamp Households** [273.12(f)]

DABC and/or GA households have the same reporting requirements as any other food stamp households. Whenever an DABC and/or GA household reports a change, adjustments must be made in the household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

Notify households whenever their benefits are altered as a result of changes in the DABC and/or GA benefits, ~~or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification~~

~~period must not end any earlier than the month following the month in which DSS determines that the certification period should be shortened, allowing adequate time to send a notice of expiration and for the household to timely reapply.~~ If the DABC and/or GA benefits are terminated but the household is still eligible for food stamp benefits, advise household members of food stamp work registration requirements, if applicable, as their First Step registration exemption no longer applies.

Whenever a change results in the reduction or termination of a household's DABC and/or GA benefits within its food stamp certification period, and DSS has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, take the following actions:

- If a change in household circumstances requires both reduction or termination in the DABC and/or GA payment and a reduction or termination in food stamp benefits, issue a single notice of adverse action for both the DABC and/or GA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, continue the household's food stamp benefit on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, conduct the hearing according to DABC and/or GA procedures and timeliness standards. The household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, make the change effective in accordance with the procedures in DSSM 9085.2.
- If the household's food stamp benefits will be increased as a result of a reduction or termination of DABC and/or GA benefits, the household's food stamp benefits must continue at the previous basis. If the household does not appeal, make the change effective in accordance with the procedures specified in DSSM 9085.2, except calculate the time limits for action from the date the DABC and/or GA notice of adverse action period expires.

Whenever a change results in the termination of a household's DABC and/or GA benefits within its food stamp certification period, and DSS does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for DABC and/or GA, and

DSS has no information on the income of the new household member), take the following action:

1) Where a DABC and/or GA notice of adverse action has been sent, wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its DABC and/or GA benefits are continued pending the appeal, the household's food stamp benefits will be continued at the same basis.

2) If an DABC and/or GA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its DABC and/or GA benefits, send the household a Form 105 requesting the verification needed to determine the household's continued food stamp eligibility notice of expiration and that it must reapply if it wishes to continue to participate. ~~Explain to the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. Explain to the household that its certification period is expiring because of changes in its circumstances that may affect its food stamp eligibility and benefit level. Give the household at least ten (10) days to provide the necessary verifications. Take the necessary action to adjust or terminate the food stamps based on the rules regarding processing reported changes per DSSM 9085.~~

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## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Delaware Medicaid/Medical Assistance Programs

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the following Medicaid policies related to the disabled children's program. Specifically, 1) changing program name to the Children's Community Alternative Disability Program; 2) revising policy to incorporate the statement of purpose of the program, clarify eligibility criteria, provide caregiver description, list levels of care factors, define specific level of care types, detail medical plan of care and costs determinations, provide cost effectiveness calculation and list options when cost effectiveness exceeds cost of institutional care; and, 3) changing the numbering to

incorporate this policy into the Long Term Care policy section of the Division of Social Services Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by September 30, 2001.

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.

### REVISION

#### ~~17200-Disabled Children~~

~~Effective 7/1/86, Medicaid coverage is available for certain disabled children who:-~~

- ~~1. are age 18 and under who are living at home;~~
- ~~2. would be eligible, if in a medical institution, for Medicaid and-~~
- ~~3. require a level of care provided in a hospital, skilled nursing facility, or intermediate care facility.~~

~~There must be medical documentation that it is appropriate to provide care for the child outside of an institutional setting, and the estimated amount which would be expended by Medicaid for the individual while he or she is living at home is not greater than the estimated amount which would otherwise be expended by Medicaid for the individual within an appropriate institution.~~

~~The medical documentation includes the Comprehensive Medical Report (MAP 25), the Medical Eligibility Fact Sheet (MAP 150), and the Attending Physician's Certification (MAP 151). Estimated costs of care are determined by the Medical Review Team based on the information provided on the MAP 150.~~

~~Essentially, any child who is disabled enough to require institutionalization may be eligible for Medicaid without regard to parental income, resources or other health insurance coverage. Effective 1/1/95, the child must have gross income at or below 250% of the current SSI standard and resources at or below the current SSI level.-~~

#### ~~17200.1 Application Process~~

~~Referrals are usually received by phone from parents, social workers, physicians, etc. Medical forms are sent to the primary physician to be used in the Level of Care determination. An application form and face to face interview must be completed. It is preferable (but not required) for the child to be present at the interview. Home visits can be made if the family cannot come into the office. The face to face interview may be waived at the discretion of the supervisor.-~~

~~NOTE: Effective 1/1/96, there is no 3 month retroactive~~

~~coverage for children who, in the month of application, are eligible for enrollment in the Diamond State Health Plan.-~~

~~During the interview the worker obtains information for the Social History and the Medical Cost Data form. Information obtained during the interview and worker's observations are sometimes critical in determining the eligibility of the child. The worker should include in the social history important factors that do not appear on the medical form.-~~

#### ~~17200.2 Medical Eligibility~~

~~The DSS Medical Review Team will determine if the level of care is approved or disapproved. They may request additional information if a decision cannot be made with the information submitted. For disabled children who are not required to enroll in the *Diamond State Health Plan* (managed care), the worker may request that the level of care be approved effective three months retroactive from the month of the application. The following information must be submitted as a package to the Medical Review Team.-~~

~~Form MAP 25: Comprehensive Medical Report~~

~~Form MAP 151: completed by the attending physician to assure that home care is appropriate.~~

~~Form MAP 150: completed by the Medicaid worker with the help of the family giving detailed analysis of medical needs, current cost of medical care, and health insurance coverage for those services.~~

#### ~~17200.3 Financial Eligibility~~

~~If the child is receiving SSI there is no need to apply for the Disabled Children's Program. This program does not provide any additional medical services above those received through SSI Medicaid.~~

~~All SSI regulations/policies and income and resource methodologies apply except the deeming of parental income and resources.~~

~~Consider only income and resources owned by the child. Any income received for the benefit of the child is considered owned by the child, i.e., child support, Social Security benefits, interest, etc. Exclude 1/3 of the child support payment amount before the income is included in the eligibility determination.-~~

~~Monthly income must be at or below 250% of the current SSI standard. Resources owned by the child must be at or below the SSI resource limit. They include but are not limited to life insurance, bank accounts, U.S. savings bonds, trust funds. See Long Term Appendix for income and resource limits. (DSSM 20100.2 and DSSM 20300.)~~

~~If the total face value of all life insurance policies is \$1500 or less, disregard the insurance as a countable resource. If the total face value of all life insurance policies exceeds \$1500, verify the cash surrender value and count it toward the resource limit. Resources may also be designated for burial.-~~

~~See Long Term Care Section for more detailed information on SSI disregards and methodologies for income~~

and resources.

#### 17200.4 Redetermination of Eligibility

Redeterminations must be completed annually. The redetermination must include a new determination of level of care (MAP 150, MAP 25) by the Medical Review Team and a detailed claims history for the preceding year showing Medicaid expenditures.

### **25000 CHILDREN'S COMMUNITY ALTERNATIVE DISABILITY PROGRAM (CCADP)**

This program was formerly known as the Disabled Children's Program and is based on 42 CFR §435.225.

#### **25050 PURPOSE**

The Children's Community Alternative Disability Program (CCADP) is a Delaware Medicaid option that is designed to serve children with significant disabilities. Such children would otherwise qualify to be cared for in an institutional setting. The State desires that this program serve as many children as possible at home or in non-institutional settings as long as it can be done safely, efficiently and economically. The best care for children who would be eligible for this program is with the support and direction of involved parents or guardians. This care will generally result from the active collaboration of DSS, and multidisciplinary providers, and parents or guardians.

In general, any child whose disability profile meets a designated level of care may be eligible for Medicaid without regard to parental income, resources, or other health insurance. Given the State's commitment to promoting children's access to basic health care, any benefit of the doubt concerning program qualification should be resolved in favor of eligibility. To the extent eligibility is jeopardized by safety concerns, DSS will act affirmatively to eliminate or reduce unsafe conditions to an acceptable level through Departmental and community resources. DSS recognizes its responsibility to make a referral to a protective agency if conditions so warrant.

#### **25100 ELIGIBILITY**

Medicaid eligibility is available to children who meet **ALL of the following seven (7) criteria** established by Federal regulation (42 CFR §435.225):

1. The child must be 18 years of age or younger (under age 19).
2. The child's countable resources do not exceed the SSI limit for a single individual described in DSSM §20300.
3. The child's countable income does not exceed 250% of the SSI benefit level.
4. The child's profile is consistent with the level of care of a hospital, Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF), Intermediate Care Facility for Mental Retardation (ICF/MR), or Intermediate Care Facility Institution for Mental Disease (ICF/IMD).
5. The child must meet Supplemental Security Income

(SSI) medical disability standards codified at 42 U.S.C. § 1382c(a) (presumptively met if child with chronic condition qualifies for SNF, ICF, ICF/MR, or ICF/IMD level of care).

6. It is appropriate to provide a comparable level of care in an alternative setting (e.g. natural family home).

7. The estimated Medicaid cost of care in the alternative setting is no higher than the estimated cost of the comparable facility-based level of care.

### **25150 APPROVAL DURATION AND REVIEW TIMETABLE**

Approval of an initial application is generally effective for a period not to exceed one year. Subject to DSSM 14950 (6 month guaranteed eligibility) if the Division is aware of the likelihood of a material change in financial or medical status, initial approval may be for a shorter period.

Redetermination of eligibility is expected to occur on at least an annual basis and may otherwise be prompted by notice of a material change in financial or medical status. Redetermination shall include a reassessment of whether the child meets all **seven eligibility criteria** (DSSM 25100). If a child manifests a chronic profile, the Division may utilize abbreviated reassessment forms and rely on previous evaluations that remain clinically valid.

### **25200 CAREGIVER QUALIFICATIONS**

The primary person in charge of the care of a child, usually a family member or a designated health care professional meeting the following qualifications:

1. The individual must be willing to accept the responsibility of the care of the child.
2. The individual must be trained and/or display competence in the medical skill required by the child.

#### **25250 GENERAL LEVEL OF CARE FACTORS**

1. The assessment of whether a child's profile is consistent with a qualifying level of care is influenced by multiple considerations. Material criteria include the following mental, physical, familial, and environmental factors:

- a. chronological and developmental age of child;
- b. nature and severity of disease or medical condition(s);
- c. symptomatology or functional limitations attributable to disease or medical condition (s);
- d. stability of disease process or medical condition(s);
- e. physical environment;
- f. availability and profile of primary caregiver(s);
- g. potential for harm, regression, or developmental delay in absence of services;
- h. extent of assistance necessary for child to engage in activities of daily living ("ADLs")
- i. extent of monitoring or supervision

necessary to minimize potential for harm due to mental or physical health risks (e.g. suicide; elopement; self injurious behaviors; seizure); and

j. extent to which professional or specialized personnel (e.g. nurse; therapist) are necessary to provide monitoring, assistance, or services.

2. Since some debilitating diseases and medical conditions (quadriplegia; profound mental retardation) are highly correlated with a qualifying level of care, the Division may adopt presumptive eligibility guidelines to expedite processing of such applications.

### **25300 SPECIFIC LEVEL OF CARE STANDARDS**

#### **25300.1 DEFINITION OF INSTITUTIONAL SETTING**

An institutional setting is a residential placement that provides room board and health related services, which are supervised by a licensed practitioner. The setting has the necessary professional personnel, equipment and facilities to meet the health and functional needs of the child on a continuing or repetitive basis and is authorized under State law to provide such care.

#### **25300.2 DEFINITION OF HOSPITAL LEVEL OF CARE**

A hospital is an institutional setting that provides medical, nursing and allied health care for acute or chronic illnesses. Such a setting includes at least daily physician intervention and the availability of around the clock professional nursing care. A hospital may provide general medical care or specialized care (e.g. psychiatric or rehabilitative).

#### **25300.3 DEFINITION OF SKILLED NURSING FACILITY LEVEL OF CARE**

Skilled nursing facility (SNF) is an institutional setting, which provides skilled nursing or rehabilitation, services for mental or physical conditions. Such a setting includes availability of around the clock professional nursing observation, assessment or intervention.

#### **25300.4 DEFINITION OF INTERMEDIATE NURSING FACILITY LEVEL OF CARE**

Intermediate care nursing facility (ICF) is an institutional setting in which nursing and allied health care and support services are provided. Such services are supervised by but not necessarily given by a licensed nurse.

#### **25300.5 DEFINITION OF ICF/IMD LEVEL OF CARE**

An intermediate care facility for mental disease (ICF/IMD) is a residential setting which offers comprehensive clinical and support services to persons with significant behavioral health disorders. Children who qualify for an ICF/IMD level of care exhibit a severe, complex, or chronic behavioral health disorder. Such disorder must compromise age-appropriate functioning in multiple areas and require frequent or intensive medical or

behavioral interventions (e.g. drug therapy; professional counseling; behavior management techniques). Subject to full consideration of factors itemized in Section DSSM 25250), the presence of the following disability-related personal characteristics supports qualifications under an ICF/IMD level of care:

- a. impaired judgment or insight
- b. disorientation to time, place, or person
- c. memory impairment
- d. perceptual or thinking disturbance
- e. lack of self-regulation or impulse control
- f. diminished capacity to focus, concentrate, or maintain attention
- g. propensity to engage in verbal or physical aggression towards others
- h. marked changes in mood or affect
- i. marked withdrawal, isolation, or depression
- j. sleep disturbance
- k. appetite disturbance with change in weight
- l. marked difficulty in maintaining interpersonal relationships
- m. propensity to elope

#### **25300.6 DEFINITION OF ICF/MR LEVEL OF CARE**

An intermediate care facility for the mentally retarded (ICF/MR) is a residential setting which offers comprehensive habilitative and support services to persons with mental retardation or related conditions. Children who qualify for an ICF/MR level of care exhibit significant deficits in age-appropriate functioning in multiple domains. As a consequence, they require frequent assistance or supervision to competently or safely engage in activities of daily living (ADLs). Subject to full consideration of factors itemized in Section DSSM 25200, the presence of adaptive behavior deficits in the following contexts supports qualification under an ICF/MR level of care:

- a. self care skills
- b. domestic skills
- c. community skills
- d. self direction
- e. social interaction
- f. safety awareness
- g. receptive and expressive communication
- h. basic learning
- i. co-occurrence of physical or behavioral health disorder
- j. co-occurrence of alcohol or substance addiction or misuse

#### **25400 APPROPRIATENESS OF COMMUNITY-BASED SETTING**

Program eligibility is contingent upon a finding that non-institutional care is appropriate and services are

available (DSSM 25100). The community-based setting must meet the child's needs safely and effectively to be appropriate. To fulfill this requirement, the Division will assess both the physical and social environment within the community-based setting. Given the State's strong preference for non-institutional care of children, denial of eligibility based on environmental deficits is disfavored. If eligibility is jeopardized by environmental deficits, the division will affirmatively attempt to eliminate or reduce such deficits to an acceptable level through Departmental and community resources.

#### **25500 DETERMINING MEDICAL PLAN OF CARE AND COSTS**

During the application and redetermination process, medical and social information is gathered from several sources including the primary caregivers, primary care practitioners, specialists and other health care providers, the schools, Child Development Watch (Part C) and/or other relevant sources. A listing of the services needed or currently being provided is recorded indicating whether there are ongoing costs (such as daily home health aides or one-time costs (durable medical equipment). The cost for each are estimated as closely as possible and, to the extent possible, costs paid or defrayed by other insurance or other means of payment insurance settlement, donations, etc.) are deducted from the cost cap. Since Medicaid is generally payor of last resort [with exception of Individual with Disabilities Education Act (IDEA) services], the assessor may contact other potential payment sources to determine potential coverage especially when it appears the child might exceed the cost cap. Once the medical costs are computed the entire packet of assessment information is reviewed by the medial review team for the cost comparison and final eligibility determination.

#### **25600 COST EFFECTIVENESS CALCULATION**

A determination of cost effectiveness for the Children's Community Alternative Disability's Program must be made using the following procedures.

##### **25625 CALCULATION**

A calculation is made of the total actual or projected cost of all significant, recurring medical services (home health aides & nurses, private duty nursing, Prescribed Pediatric Extended Care, supplies, equipment and therapies).

##### **25650 ANNUALIZED COSTS CALCULATION**

The annualized costs of any significant recurring DME (e.g. specialized wheelchair or lift not included in facility per diem rate) is added to the calculation in DSSM 25625.

##### **25675 OTHER COSTS**

All other costs, such as physician services, pharmaceuticals, lab tests, x-rays, etc. are not part of medical

facility costs, so will not be considered in the cost effectiveness determination except in cases where acute hospitalization is the appropriate comparable level of care.

#### **25700 COST DOES NOT EXCEED COMPARABLE MEDICAL FACILITY CARE**

The calculated cost in DSSM 25600 must not exceed 100% of comparable medical facility care. Comparable rates to be used are defined in the following subsections.

A. If the child is determined to meet the hospital LOC, the anticipated home services costs will be compared to the current fiscal year inpatient hospital rate of the AI DuPont Hospital for Children or alternate facility rate as determined by the Medicaid Director.

B. If a child is determined to meet the skilled LOC, the anticipated home services costs will be compared to the current averaged rate of participating Delaware nursing facilities that are caring for children under 18. A higher comparative rate based on the current averaged rate for children placed in subacute pediatric facilities may be applied for children determined "superskilled" by the DSS Medical Operation Administrator.

C. If a child is determined to meet ICF/MR/DD LOC, the anticipated home service costs will be compared to the current Stockley Center ICF/MR/DD rate or alternate facility rate as determined by the Medicaid Director.

D. If a child is determined to meet the ICF/IMD LOC, the anticipated home costs would be compared to the current Terry Center rate or alternate facility rate as determined by the Medicaid Director.

E. If a child is determined to meet an ICF LOC the anticipated home services costs will be compared to the current averaged rate of participating Delaware nursing facilities that are caring for children under 18 years of age.

#### **25800 COST EFFECTIVENESS EXCEEDS COST OF INSTITUTIONAL CARE**

When the cost effectiveness analysis shows that the cost of care in the home will exceed the cost of comparable institutional care, the parent or guardian will be offered a choice of the following options.

A. The use of less costly alternatives (such as privately contracting with LPNs or RNs for private duty nursing at a lower cost than can be obtained through an agency, purchasing refurbished, used equipment, etc.), or

B. The use of fewer units of service with assurances from parent/guardian that the remainder of medically necessary services will be provided by or paid for by other means, or

C. The admission to an appropriate medical facility, or

D. The withdrawal of the application for this program.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL****DIVISION OF AIR & WASTE MANAGEMENT****Air Quality Management Section**

Statutory Authority: 7 Delaware Code,  
Chapters 60, (7 Del.C. Ch. 60)

**SAN # 2001-14****1. TITLE OF THE REGULATION:**

Regulation No. 24, Section 2, "Definitions"  
Regulation No. 24, Section 26, "Stage IV Vapor  
Recovery"  
Regulation No. 24, Section 36, "Stage II  
Vapor Recovery"

**2. BRIEF SYNOPSIS OF THE SUBJECT,  
SUBSTANCE AND ISSUES:**

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in volatile organic compound (VOC) emissions, which are a factor in the formation of ground-level ozone. The Department is proposing to revise Regulation No. 24, Section 2, Section 26 and Section 36 because the Department believes that Gasoline Dispensing Facilities within the State may not be achieving the Volatile Organic Compound (VOC) emission reductions that are currently required. Under Regulation No. 24 the control efficiency should be 95%. The Department believes the system components, as well as the testing frequencies are contributing factors to the low VOC emission reductions. The amended regulation establishes (1) requirements for using improved vapor recovery adapters and connections; (2) requirements for annual vapor recovery testing; and (3) minimum requirements applicable to compliance testing companies that perform compliance testing in Delaware.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY  
TO ACT:**

7 Delaware Code, Chapter 60

**5. OTHER REGULATIONS THAT MAY BE  
AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through October 1, 2001. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Monday, September 24, 2001 beginning at 6pm in the Richardson & Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

**7. PREPARED BY:**

Deanna Morozowich (302)739-4791, August 8, 2001

**PROPOSED REGULATION NO. 24****As of 8/8/01)****CONTROL OF VOLATILE ORGANIC COMPOUND  
EMISSIONS****Section 2 - Definitions.**

xx/xx/01

For the purpose of this regulation, the following definitions apply:

- a. "Actual emissions" means the quantity VOCs emitted from a source during a particular time period.
- b. "As applied" means including any dilution solvents added before application of the coating.
- c. "Basecoat" means a pigmented topcoat that is the first coat applied as part of a multistage topcoat system.
- d. "Bulk gasoline plant" means a gasoline storage and distribution facility with an average daily throughput of 76,000 liters (L) (20,000 gallons [gal]) of gasoline or less on a monthly average.
- e. "Bulk gasoline terminal" means a gasoline storage facility that receives gasoline from refineries, delivers gasoline to bulk gasoline plants or to commercial or retail accounts, and has a daily throughput of more than 76,000 L (20,000 gal) of gasoline on a monthly average.
- f. "Capture efficiency" means the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC, expressed as a percentage.
- g. "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.
- h. "Carbon absorber" means an add-on control

device that uses activated carbon to absorb VOCs from a gas stream.

i. **"Carbon adsorption system"** means a carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

j. **"Clearcoat"** means a topcoat that contains no pigments or only transparent pigments and that is the final coat applied as part of a multistage topcoat system.

k. **"Coating"** means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, inks, maskants, and temporary protective coatings.

l. **"Coating unit"** means a series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary to have an oven or a flashoff area in order to be included in this definition.

m. **"Continuous vapor control system"** means a vapor control system that treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.

n. **"Control device"** means equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

o. **"Control system"** means a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

p. **"Day"** means a period of 24 consecutive hours beginning at midnight local time, or beginning at a time consistent with a facility's operating schedule.

q. **"Destruction or removal efficiency"** means the amount of VOC destroyed or removed by a control device expressed as a percent of the total amount of VOC entering the device.

r. **"Double block-and-bleed system"** means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

s. **"Exempt compounds,"** means any of the compounds listed in Regulation 1, Section 2 - Definitions, "Volatile Organic Compounds," which have been determined to have negligible photochemical reactivity.

For determining compliance with emission limits, VOCs will be measured according to the procedures in Methods 25 and 25A of Appendix A of 40 CFR, Part 60, and the procedures and equations in '60.755. Where such a method also measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly-reactive compounds when determining compliance with an emission standard. However, the Department may require such owner or operator, as a

precondition to excluding these compounds for purposes of determining compliance, to provide monitoring methods and monitoring results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the sources emissions.

In addition to the procedures for requesting a satisfactory compliance determination, where the Department proposes to allow the use of a test method for excluding negligibly-reactive compounds that is different or not specified in the approved SIP, such change shall be submitted to the U.S. EPA for approval as part of a SIP revision.

t. **"External floating roof"** means a cover over an open-top storage tank consisting of a double deck or pontoon single deck that rests upon and is supported by the volatile organic liquid being contained and is equipped with a closure seal or seals to close the space between the roof edge and tank shell.

u. **"Facility"** means all of the pollutant-emitting activities, excluding pollutant-emitting activities from mobile sources, that are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or person under common control).

v. **"First attempt at repair"** means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

w. **"Flashoff area"** means the space between the coating application area and the oven.

x. **"Gasoline tank truck"** means a delivery tank truck used at bulk gasoline plants, bulk gasoline terminals, or gasoline dispensing facilities that is loading or unloading gasoline or that has loaded or unloaded gasoline on the immediately previous load.

y. **"Gloss flattener"** means a low-gloss coating that is formulated to eliminate glare on the interior surfaces of a vehicle for safety purposes, as specified under the U.S. Department of Transportation Motor Vehicle Safety Standards.

z. **"Heavy-duty truck"** means any motor vehicle rated at greater than 3,864 kg (8,500 lb) gross weight designed primarily to transport property.

aa. **"Incinerator"** means a combustion apparatus in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned and from which the solid and gaseous residues contain little or no combustible material.

bb. **"Intermittent vapor control system"** means a vapor control system that employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.

cc. **"Internal Floating Roof"** means a cover or roof in a fixed-roof tank that rests upon or is floated upon, the liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and the tank shell.

dd. **“Knife coating”** means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

ee. **“Leak”** means a VOC emission indicated by an instrument calibrated according to Method 21 of 40 CFR, Part 60, Appendix A, using zero air (less than 10 parts per million [ppm] of hydrocarbon in air) and a mixture of methane or n-hexane and air at a concentration of about, but less than, 10,000 ppm methane or n-hexane.

ff. **“Lease custody transfer”** means the transfer of produced crude oil or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

gg. **“Liquid-mounted seal”** means a primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

hh. **“Loading rack”** means an aggregation or combination of gasoline loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

ii. **“Lower explosive limit”** (LEL) means the concentration of a compound in air below which a flame will not propagate if the mixture is ignited.

jj. **“Maximum theoretical emissions”** means the quantity of VOC that theoretically could be emitted by a source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. The design capacity or maximum production capacity includes use of coatings and inks with the highest VOC content used in practice by the source for the 2 preceding years.

kk. **“Maximum true vapor pressure”** means the equilibrium partial pressure exerted by a stored liquid at the temperature equal to:

1. for liquids stored above or below the ambient temperature, the highest calendar-month average of the liquid storage temperature, or,

2. for liquids stored at the ambient temperature, the local maximum monthly average temperature as reported by the National Weather Service. This pressure shall be determined by one of the following:

- i. In accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss From External Floating Roof Tanks."

- ii. By using standard reference texts.

- iii. By ASTM D2879-83.

- iv. By any other method approved by the Department as part of the State Implementation Plan (SIP) Revision.

ll. **“Multicomponent coating”** means a coating which is packaged in two or more parts, which parts are

combined before application, and where a coreactant from one part of the coating chemically reacts, at ambient conditions, with a coreactant from another part of the coating.

mm. **“Open-ended valve or line”** means any valve, except safety relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

nn. **“Organic compound”** means any carbon-containing chemical compound excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

oo. **“Oven”** means a chamber which is used to bake, cure, polymerize, and/or dry a coating.

pp. **“Overall emission reduction efficiency”** means the weight per unit time of VOC removed or destroyed by a control device divided by the weight per unit time of VOC generated by a source, expressed as a percentage. The overall emission reduction efficiency can also be calculated as the product of the capture efficiency and the control device destruction or removal efficiency.

qq. **“Owner or Operator”** means any person who owns, leases, controls, operates or supervises a facility, a source, or air pollution control or monitoring equipment.

rr. **“Person”** means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or their legal representative, agent, or assigns.

ss. **“Petroleum”** means the crude oil removed from the earth and the oils derived from tar sands, shale and coal.

tt. **“Petroleum Liquid”** means petroleum condensate, and any finished or intermediate products manufactured in a petroleum refinery.

uu. **“Plastisol”** means a coating made of a mixture of finely divided resin and a plasticizer. Plastisol is applied as a thick gel that solidifies when heated.

vv. **“Press-Ready Ink”** means the ink, as applied to the substrate, after all solvents and diluents have been added.

ww. **“Pressure release”** means the emission of materials resulting from system pressure being greater than set pressure of the pressure relief device.

xx. **“Primer”** means any coating applied prior to the application of a topcoat or color coat for the purposes of surface preparation, corrosion resistance, adhesion, and color uniformity.

yy. **“Process unit shutdown”** means a work practice or operational procedure that stops production from a process unit or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

zz. **“Reid vapor pressure”** means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D323-82.

aaa. **“Repaired”** means that equipment is adjusted, or otherwise altered, in order to eliminate a leak as indicated by one of the following: an instrument reading of 10,000 ppm or greater, indication of liquids dripping, or indication by a sensor that a seal or barrier fluid system has failed.

bbb. **“Roll coating”** means the application of a coating material to a moving substrate by means of hard rubber, elastomeric, or metal rolls.

ccc. **“Rotogravure coating”** means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is recessed relative to the non-image area, and the coating material is picked up in these recessed areas and is transferred to the substrate.

ddd. **“Shutdown”** means the cessation of operation of a facility or of its emission control or emission monitoring equipment.

eee. **“Source”** means any building, structure, equipment (excluding mobile equipment temporarily in place), or installation that directly or indirectly releases or discharges, or has the potential to release or discharge, VOCs into the atmosphere.

fff. **“Stage I Vapor Recovery System”** means the control of gasoline vapor from any delivery vessel into any stationary storage vessel, where the vapor displaced by the liquid gasoline is returned to the delivery vessel and transported to the refinery.

ggg. **“Stage II Vapor Recovery System”** means ~~the a system that controls the emissions~~ of gasoline vapor at the vehicle fill-pipe, where the vapor is captured and returned to a vapor-tight storage tank, or is destroyed; which achieves an overall control efficiency of at least 95% ~~by incineration~~.

hhh. **“Standard conditions”** means a temperature of 20 C (68 F) and pressure of 760 mm Hg (29.92 in. Hg).

iii. **“Startup”** means the setting in operation of a source or of its emission control or emission monitoring equipment.

jjj. **“Storage Vessel”** means each tank, reservoir or container used for the storage of Volatile Organic Liquids, but does not include:

1. Frames, housing, auxiliary supports or other components that are not directly involved in the containment of liquids or vapors; or

2. Subsurface caverns or porous rock reservoirs.

kkk. **“Submerged fill”** means the method of filling a delivery vessel or storage vessel where product enters within 150 millimeters (mm) (5.9 inches [in.]) of the bottom of the delivery or storage vessel. Bottom filling of delivery and storage vessels is included in this definition.

lll. **“Substrate”** means the surface onto which a coating is applied or into which a coating is impregnated.

mmm. **“Throughput”** means the amount of gasoline dispensed at a gasoline dispensing facility during a calendar month after November 15, 1990.

~~nnn.~~ nnn. **“Transfer efficiency”** means the ratio of the amount of coating solids adhering to the object being coated to the total amount of coating solids used in the application process, expressed as a percentage.

~~ooo.~~ ooo. **“Vapor collection system”** means all piping, seals, hoses, connections, pressure-vacuum vents, and other equipment between the gasoline tank truck and the vapor processing unit and/or the storage tanks and vapor holder.

~~ppp.~~ ppp. **“Vapor control system”** means a system that limits or prevents release to the atmosphere of organic compounds in the vapors displaced from a tank during the transfer of gasoline.

~~qqq.~~ qqq. **“Vapor-mounted seal”** means a primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface and the floating roof.

~~rrr.~~ rrr. **“Vapor recovery system”** means a vapor-gathering system capable of collecting VOC vapors and gases emitted during the operation of any transfer, storage, or process equipment.

~~sss.~~ sss. **“Vapor-tight”** means equipment that allows no loss of vapors. Compliance with vapor-tight requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the LEL when measured with a combustible gas detector, calibrated with propane, at a distance of 2.54 centimeters (cm) (1 in.) from the source.

~~ttt.~~ ttt. **“Vapor-tight gasoline tank truck”** means a gasoline tank truck that has demonstrated within the 12 preceding months that its product delivery tank will sustain a pressure change of not more than 75 mm (3.0 in.) of water within 5 minutes (min) after it is pressurized to 450 mm (18 in.) of water; or when evacuated to 150 mm (5.9 in.) of water, the same tank will sustain a pressure change of not more than 75 mm (3.0 in.) of water within 5 min. This capability is to be demonstrated using the test procedures specified in Method 27 of Appendix A of 40 CFR, Part 60 (July 1, 1992).

~~uuu.~~ uuu. **“Volatile Organic Liquid”** (VOL) means any organic liquid which can emit any Volatile Organic Compound into the atmosphere (see definition of "Volatile Organic Compound").

~~vvv.~~ vvv. **“Volatile Organic Compound”** (VOC) means any carbon-containing compound excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any

organic compounds other than those defined as "Exempt Compounds", which have been determined to have negligible photochemical reactivity (see definition of "Exempt Compounds"). In addition to the procedures for requesting a satisfactory compliance demonstration, where the Department proposes to allow the use of a test method for excluding negligibly reactive compounds that is different from or not specified in the approved SIP, such change shall be submitted to the Environmental Protection Agency (U.S. EPA) for approval as part of a SIP Revision.

~~www.~~ www. "Web coating line" means all of the coating applicator(s), drying area(s), or oven(s), located between an unwind station and a rewind station, that are used to apply coating onto a continuous strip of substrate (the web). A web coating line need not have a drying oven.

**Section 26 - Gasoline Dispensing Facility**

**Stage I Vapor Recovery**

1/11/93

xx/xx/01

**a. Applicability.**

1. This Section applies to the control of gasoline vapors at a gasoline dispensing facility from any delivery vessel into any stationary storage vessel, where the vapors displaced by the liquid gasoline are retrieved to the delivery vessel and transported back to the refinery. This will include all three (3) counties.

2. The following are subject only to paragraph (c)(1)(i) of this Section:

i. Any transfer made to a gasoline dispensing facility storage tank that is equipped with a floating roof or its equivalent that has been approved by the Administrator of the U.S. EPA as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

ii. Any stationary gasoline storage tank with a capacity that is less than 2,080 liters (L) (550 gallons [gal]) that is used exclusively for the fueling of implements of husbandry.

iii. Any stationary gasoline storage tank with a capacity of less than 7,600 L (2,000 gal) that was constructed prior to January 1, 1979.

iv. Any stationary gasoline storage tank with a capacity of less than 950 L (250 gal) that was constructed after December 31, 1978.

3. Any gasoline dispensing facility having a monthly throughput of less than 38,000 L (10,000 gallons) is subject only to the provisions of paragraphs (c)(1)(i) and (d) of this Section. Any gasoline dispensing facility that ever exceeds this applicability threshold for any calendar month shall be subject to all of the provisions of this Section, and shall remain subject to these provisions even if its throughput later falls below the threshold.

**b. Compliance Schedule.**

1. Facilities for which construction begins after November 15, 1990 shall be in compliance no later than May 15, 1993.

2. Facilities installed before November 15, 1990 and having a monthly throughput of at least 100,000 gallons in any calendar month shall be in compliance no later than November 15, 1993.

3. Facilities installed before November 15, 1990 and having a monthly throughput of greater than 10,000 gallons but less than 100,000 gallons in any calendar month shall be in compliance no later than November 15, 1994.

**c. Standards.**

1. The owner or operator of each gasoline dispensing facility subject to this Section shall comply with the following requirements:

i. All gasoline storage tanks at gasoline dispensing facilities shall be loaded by submerged fill.

ii. All gasoline vapor lines on the storage tank shall be equipped with closures that seal upon disconnect.

iii. A vapor balance system shall be installed with a vapor-tight line from the gasoline storage tank to the gasoline tank truck. The system shall be designed such that the gauge pressure in the gasoline tank truck does not exceed 450 millimeters (mm) (18 inches [in.]) of water pressure or 150 mm (5.9 in.) of water vacuum during product transfer.

iv. If a gauge well separate from the fill tube is used, it shall be provided with a submerged drop tube that extends to within 150 mm (5.9 in.) of the gasoline storage vessel bottom of the tank.

v. Liquid fill connections for all systems shall be equipped with vapor tight caps.

2. The owner or operator of a gasoline tank truck shall not unload gasoline to a gasoline storage tank at a gasoline dispensing facility subject to this Section unless the following conditions are met:

i. All hoses in the vapor balance system are properly connected.

ii. The adapters or couplers that attach to the vapor line on the underground storage vessel have closures that seal upon disconnect.

iii. All vapor return hoses, couplers, and adapters used in the gasoline delivery are vapor-tight.

iv. All tank truck vapor return equipment is compatible with the vapor balance equipment installed on the gasoline dispensing facility storage tank.

v. All hatches on the gasoline tank truck are closed and securely fastened.

vi. The filling of storage tanks at gasoline dispensing facilities is limited to unloading by vapor-tight gasoline tank trucks. Documentation that the gasoline tank truck has met the specifications of Method 27 of 40 CFR, Part 60, **Appendix A** (July 1, 1992), shall be carried on the

tank truck. This documentation shall include all of the information required under 40 CFR 60.505 (July 1, 1992). In addition, test results shall be included for both the pressure and vacuum tests.

d. Recordkeeping. The owner or operator of each gasoline dispensing facility subject to this Section shall maintain daily records showing the quantity of all gasoline delivered to the site. These records shall be retained for at least 5 years in a readily accessible location and shall be made available to the Department immediately upon verbal or written request.

e. Reporting. The owner or operator of any facility containing sources subject to this Section shall comply with the requirements in Section 5 of this regulation.

a. Applicability.

1. This Section applies to any stationary gasoline storage tank located at any gasoline dispensing facility in the State of Delaware, except:

i. The following storage tanks shall be subject only to the requirements of paragraph (c)(1)(i) of this Section:

A. Any stationary gasoline storage tank that is equipped with a floating roof or its equivalent that has been approved by the Administrator of the U.S. EPA as part of a State Implementation Plan (SIP) or Federal Implementation Plan (FIP) revision.

B. Any stationary gasoline storage tank with a capacity of less than 550 gallons [gal] used exclusively for the fueling of farm equipment.

C. Any stationary gasoline storage tank with a capacity of less than 2,000 gal that was constructed prior to January 1, 1979.

D. Any stationary gasoline storage tank with a capacity of less than 250 gal that was constructed after December 31, 1978.

ii. The storage tank(s) at any gasoline dispensing facility, which never has a throughput of greater than 10,000 gallons of gasoline, shall be subject only to the requirements of paragraphs (c)(1)(i) and (d) of this Section. The storage tank(s) at any gasoline dispensing facility that ever exceeds this applicability threshold shall be subject to all of the requirements of this Section, and shall remain subject to these requirements even if its throughput later falls below the exemption throughput.

2. The requirements of this Section are in addition to all other State and Federal requirements, to include the permitting requirements of Regulation No. 2 of the State of Delaware "Regulations Governing the Control of Air Pollution". Any gasoline dispensing facility that is currently subject to any state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and

shall remain subject to those provisions.

3. Compliance Schedule

Any stationary gasoline storage tank subject to the requirements of this Section shall be in compliance as follows:

i. Storage tanks located at any facility that first commences operations:

A. Before November 15, 1990 and having any throughput of at least 100,000 gallons: no later than November 15, 1993.

B. Before November 15, 1990 and having any throughput of greater than 10,000 gallons but less than 100,000 gallons: no later than November 15, 1994.

C. On or after November 15, 1990 and before May 15, 1993: no later than May 15, 1993.

D. On or after May 15, 1993: upon commencement of operations.

ii. The requirements of paragraph(c)(1)(ii)(E) are effective on and after May 1, 2003.

b. Reserved.

c. Standards.

1. The owner and/or operator of any stationary storage tank that is subject to the requirements of this Section shall:

i. Load the stationary gasoline storage tank(s) by submerged fill using a drop tube that extends to within 150 mm (5.9 in.) from the bottom of the tank.

ii. Design, install, operate, and maintain a Stage I Vapor Recovery System that operates such that the vapors displaced by the liquid gasoline are returned to the delivery vessel and transported back to the bulk plant or terminal.

A. All hoses in the Stage I Vapor Recovery system shall be properly connected.

B. All vapor lines, couplers, and adapters used in the gasoline delivery shall be vapor-tight.

C. All adapters and couplers that attach to any vapor line on the storage vessel shall have closures that seal upon disconnect.

D. Reserved.

E. All Stage I systems shall utilize dual point vapor connections to return vapors from the storage tank to the delivery truck.

2. The filling of storage tanks subject to the requirements of this Section shall be limited to unloading by vapor-tight gasoline tank trucks or delivery trucks which:

i. meet all of the requirements of Section 27 of this regulation; and

ii. are equipped with vapor return equipment that is compatible with the Stage I Vapor Recovery System installed on the storage tank.

d. Recordkeeping. The owner and/or operator of any stationary gasoline storage tank exempted from the requirements of this Section pursuant to paragraph (a)(1)(ii)

of this section shall keep on the facility premises and in a form acceptable to the Department, records showing monthly throughput. These records shall be retained for at least 5 years from the date of record, and shall be made immediately available to the Department upon request.

e. Reporting. The owner and/or operator of any facility containing sources subject to this Section shall comply with the requirements of Section 5 of this regulation.

### **Section 36 - Stage II Vapor Recovery.**

1/11/93

xx/xx/01

a. Applicability. This section applies to the control of gasoline vapors at the vehicle fill pipe during refueling operations, and at a gasoline dispensing facility. The vapors are captured and returned to a vapor-tight underground storage tank, or destroyed. These systems must be installed at affected facilities in all three Delaware counties: New Castle, Kent, and Sussex. Refer to the compliance schedule in part d. for county specific schedules. All applicable facilities shall comply with the operation, maintenance and testing requirements of this Section, and with **Appendix "J"** and its subparts.

#### b. Definitions

"Stage II Vapor Recovery System" means the control of gasoline vapor at the vehicle fill pipe, where the vapors are captured and returned to a vapor-tight underground storage tank, or destroyed.

"Throughput" means the amount of gasoline dispensed at a gasoline dispensing facility during a calendar month after November 15, 1990.

"Certified STAGE II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95%, and approved by the Department.

"Defective Equipment" means any absence, disconnection, or malfunctioning of a Stage II vapor recovery system component which is required by this rule including, but not limited to, the following:

1. A vapor return line that is crimped, flattened, blocked, or that has any hole or slit that allows vapors to leak out.
2. A nozzle bellows that has any hole large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length.
3. A nozzle faceplate or cone that is torn or missing over 25% of its surface.
4. A nozzle with no automatic overfill control mechanism or an inoperable overfill control mechanism.
5. An inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or

vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this rule.

6. Failure to meet the requirements of **Appendix "J"**.

#### e. Stage II Requirements

No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:

1. The transfer is made using a Certified Stage II vapor recovery system that is designed, operated, and maintained such that the vapor recovery system removes, destroys, or prevents the discharge into the atmosphere of at least 95% by weight of Volatile Organic Compound (VOC) emissions.

2. All installed Stage II vapor recovery systems must be certified by the California Air Resource Board (CARB).

#### d. Compliance Schedule

Affected gasoline facilities shall be in compliance with the following schedule:

1. Facilities for which construction began after November 15, 1990: by May 15, 1993 for facilities located in New Castle and Kent Counties, and by May 15, 1995 for facilities located in Sussex County.

2. Facilities installed before November 15, 1990 and having any single monthly throughput of at least 100,000 gallons per month: by November 15, 1993 for facilities located in New Castle and Kent Counties, and by November 15, 1995 for facilities located in Sussex County.

3. Facilities installed before November 15, 1990 and having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons: by November 15, 1994 for facilities located in New Castle and Kent Counties, and by November 15, 1996 for facilities located in Sussex.

4. Stage II vapor recovery systems installed prior to November 15, 1992, which are designed for dual vapor recovery hoses (not coaxial) shall be retrofitted with coaxial hoses no later than January 1, 1994, or upon any vapor system modification, whichever is first. In addition, remote vapor check valves in balance type systems installed prior to November 15, 1992, shall be retrofitted with check valves located in the nozzle no later than January 1, 1994, or upon any vapor system modification, whichever is first.

5. New systems installed after November 15, 1992 will not be permitted to have dual vapor recovery hoses or remote check valves for balance type systems.

6. Any gasoline dispensing facility that ever exceeds the exemption throughput specified in Section e of this subpart shall be subject to all of the provisions of this Section, and shall remain subject to these provisions even if its throughput later falls below the exemption throughput.

## a. Exemptions

The burden of proof of eligibility for exemption from this rule is on the applicant. Persons seeking such an exemption shall maintain adequate records of monthly throughput, and furnish these records to the Department upon request. These records shall be maintained on file for three years. The provisions of Section 36e shall not apply to the following facilities:

1. Gasoline facilities, which never dispense greater than 10,000 gallons of gasoline in any, single calendar month.
2. Gasoline dispensing facilities that are used exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles.

## b. Requirements

1. All applicable gasoline dispensing facilities subject to the provisions of this Section and Section 26 of this Regulation shall perform the following tests in accordance with the test methods and procedures in **Appendix "J"** or as otherwise approved by the Department in accordance with **Appendix "J"**, subsection b.1., and within the context of the provisions of subsection c. The tests shall be carried out at the completion of the installation, and as per the schedule listed below:

- i. A Pressure Decay/Leak Test every five (5) years.
- ii. A Dynamic Backpressure (Dry) Test annually. A Department representative shall be present at least once every three (3) years.
- iii. A Vapor Space Tie Test shall be performed only at the time of the time of installation; this test verifies proper installation of the underground piping (See **Appendix "J2"**, step d.10.).
- iv. A Liquid Blockage (Wet) Test, only after installation.
- v. Test to ensue proper functioning of nozzle automatic shut-off mechanisms and flow prohibiting mechanisms, where applicable.

2. The Department may require that all of the above tests shall be required if there are any modifications or repairs.

3. The Department reserves the right to perform compliance inspections and testing at any time.

## e. Performance Testing Notification

1. The Department shall receive written notification 10 working days prior to any test operation, unless permission is granted to the contrary.

2. The owner and operator and the test contractor shall report all test failures to the Department within twenty-four (24) hours of the failure.

## d. Operating Instructions/Postings

The owner and/or operator of the facility shall conspicuously post operating instructions for the vapor recovery system on the front of each gasoline dispenser to include the following:

1. A clear description of how to correctly dispense gasoline with the vapor recovery nozzles.
2. A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.
3. A telephone number to report problems experienced with the vapor recovery system to the Department. This number may be posted in the store so long as it is conspicuously displayed.

## e. Other General Requirements

1. Conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until said system has been repaired in accordance with **Appendix "J"**.

2. Provide adequate training and written instructions to the operator of the affected facility to assure proper operation of the vapor recovery system in accordance with **Appendix "J"**.

3. The owner and/or operator of the facility shall perform routine maintenance inspections of the Stage II Vapor Recovery System on a daily basis, in accordance with **Appendix "J"**.

## f. Recordkeeping and Reporting

Stage II system owners and operators shall maintain various types of compliance and testing records as listed in Section f. of **Appendices "J", "J2" and "J3"**.

## a. Applicability.

1. This Section applies to any gasoline dispensing facility located in the State of Delaware, except:

i. Any gasoline dispensing facility, which never has a throughput of greater than 10,000 gallons of gasoline, shall be subject only to the requirements of paragraph (e)(2) of this Section. Any gasoline dispensing facility that ever exceeds this throughput shall be subject to all of the requirements of this Section, and shall remain subject to these requirements even if its throughput later falls below the exemption throughput.

ii. Any gasoline dispensing facility that is used exclusively for refueling marine vehicles, aircraft, farm equipment, and/or emergency vehicles.

2. On and after May 1, 2003, the requirements of paragraph (f) of this Section apply to any owner and/or operator of any company that performs compliance testing of Stage II Systems within the State of Delaware.

3. The requirements of this Section are in addition to all other State and Federal requirements, to include the

permitting requirements of Regulation No. 2 of the State of Delaware "Regulations Governing the Control of Air Pollution." Any gasoline dispensing facility that is currently subject to any state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and shall remain subject to those provisions.

#### 4. Compliance Schedule

Any gasoline dispensing facility subject to the requirements of this Section shall be in compliance as follows: Any facility that first commences operations:

i. Before November 15, 1990 and that has any throughput of greater than 10,000 gallons but less than 100,000 gallons: by November 15, 1994 for facilities located in New Castle and Kent Counties, and by November 15, 1996 for facilities located in Sussex.

ii. Before November 15, 1990 and that has any throughput of at least 100,000 gallons: by November 15, 1993 for facilities located in New Castle and Kent Counties, and by November 15, 1995 for facilities located in Sussex County.

iii. On or after November 15, 1990 and before January 11, 1993: by May 15, 1993 for facilities located in New Castle and Kent Counties, and by May 15, 1995 for facilities located in Sussex County.

iv. On or after January 11, 1993: upon commencement of operations.

5. Any Stage II vapor recovery system installed prior to November 15, 1992, and using dual vapor recovery hoses (not coaxial) shall be retrofitted with coaxial hoses no later than January 1, 1994, or upon any vapor system modification, whichever is first. Any system installed after November 15, 1992 shall be equipped with coaxial hoses.

6. Remote vapor check valves in balance type systems installed prior to November 15, 1992, shall be retrofitted with check valves located in the nozzle no later than January 1, 1994, or upon any vapor system modification, whichever is first. Any system installed after November 15, 1992 shall be equipped with remote check valves located in the nozzle.

#### b. Definitions

**"Assist System"** means a system that creates a vacuum to assist the movement of vapors back into the storage tank.

**"Balance System"** means a system where pressure develops in the vehicle tank during fueling operations, and vacuum in the storage tank created when the fuel is removed, forces displaced vapors out the vehicle tank and back into the storage tank.

#### c. Standards

1. The owner and/or operator of any gasoline dispensing facility subject to the requirements of this Section shall:

i. Design, install, operate, and maintain one of

the Stage II Vapor Recovery Systems identified in paragraph (g) of this section.

ii. For systems with manifolded vapor lines, the liquid shall return into the lowest octane tank. For non-manifolded systems with separate vapor lines, the liquid shall return to the tank that has the same product as is dispensed at the nozzle where the liquid was introduced into the vapor lines.

iii. On and after May 1, 2003, install and maintain a vapor shear valve that functions similarly to the product shear valve.

iv. Conspicuously post "Operating Instructions" on both sides of each gasoline dispenser. Such instructions shall include:

A. A clear description of how to correctly dispense gasoline.

B. A warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline.

C. A toll-free telephone number to report problems experienced with the vapor recovery system to the Department.

2. At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is selected for installation and/or installed on their facility premises. Acceptable forms of training include equipment manufacturer's seminars, classes or workshops, or any other training approved by the Department.

i. Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee within three (3) months of the installation of the Stage II system. The certificate shall display the name of the person who completed the training program.

ii. The representative that completed the training program is then responsible for informing all facility employees about conducting routine maintenance pursuant to paragraph (c)(3) of this section and about the operation and maintenance of the Stage II system. The representative shall maintain proof of training for all employees who will be conducting daily inspections. If such representative leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three (3) months.

iii. Training shall include, but not be limited to, the following subjects:

A. Purposes and effects of the Stage II Vapor Control Program.

B. Equipment operation and function specific to their facility's equipment.

C. Maintenance schedules and requirements

for the facility's equipment.

D. Equipment warranties.

E. Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

3. Each day personnel trained pursuant to paragraph (c)(2) of this Section shall perform routine maintenance inspections and record the inspection results.

i. Such inspections shall consist of, but not limited to, inspection of the Stage II system for the following defects:

A. A faceplate or face cone of a balance or assist system nozzle that does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or face cone is over 25% of its' surface.

B. A vapor assist system nozzle fitted with an efficiency compliance device that is damaged over 25% of its' surface.

C. A nozzle bellows with a triangular tear measuring ½ inch or more to a side, a hole measuring ½ inch or more in diameter, or a slit or tear measuring one inch or more in length.

D. A nozzle bellows or efficiency compliance device that is loosely attached to the nozzle body, not attached by a manufacturer approved method, or a vapor check valve frozen in the open position.

E. A nozzle liquid shutoff mechanism that malfunctions in any manner, where the spring or latching knurl is damaged or missing.

F. A nozzle with a vapor check valve that is defective, or a hose with a disconnected or damaged breakaway.

G. A vapor assist system nozzle spout that is damaged and the vapor collection holes are obstructed.

H. A dispenser mounted vacuum pump that is not functioning.

I. A vacuum assist system with a central vacuum unit or vapor processing unit that is inoperative.

J. A hose retractor that does not fully retract.

K. Any other component required by the Department for use in the system that is missing, disconnected, or malfunctioning.

ii. The owner and/or operator shall post "Out of Order" signs and "Bag-out" the nozzle associated with any part of the defective vapor recovery system until said system has been repaired or replaced.

#### d. Testing Requirements

1. Any gasoline dispensing facility subject to the requirements of paragraph (c)(1)(i) of this Section shall perform and pass the following tests in accordance with the test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA.

i. The following tests shall be performed and

passed within ten (10) days of installation of the Stage II vapor recovery system:

A. A Pressure Decay/Leak Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

B. A Dynamic Backpressure and Liquid Blockage Test, conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 8. This test procedure is hereby incorporated by reference.

C. For assist systems, an Air to Liquid Volume Ratio Test conducted in accordance with the procedures in "Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites, PEI/RP300-97", Chapter 9. This test procedure is hereby incorporated by reference.

D. A Vapor Tie Test, conducted in accordance with Test Procedure TP-96-1 of the San Diego Protocol, Revision III dated 3-1-96. This test procedure is hereby incorporated by reference.

ii. The following tests shall be performed and passed annually for each Stage II vapor recovery system according to the test procedures stated in paragraph (d)(1)(i) of this Section:

A. A Pressure Decay/Leak Test.

B. For Balance Systems, A Dynamic Backpressure and Liquid Blockage Test.

C. For Assist Systems, An Air to Liquid Volume Ratio Test.

iii. Any additional testing(s) required by the Department or the manufacturer shall be carried out according to the schedule stated in any permit issued pursuant to Regulation No. 2.

2. The Department may require the performance of any of the tests identified in paragraph (d)(1) of this Section at anytime at the owner's expense.

3. Written notification shall be submitted to the Department not less than ten (10) working days prior to the performance of any compliance test, unless approval by the Department is granted to the contrary.

4. The owner and/or operator and test contractor shall report all test failures to the Department within twenty-four (24) hours of the failure.

5. The owner and/or operator shall submit the following to the Department within thirty (30) days of the test date:

i. the actual test date; and

ii. the installing and/or testing companies' name(s), address (es), and phone number(s); and

iii. if any corrective action was performed pursuant to paragraph (f)(4)(ii) then submit all information specified in (f)(4).

**e. Recordkeeping and Reporting**

1. The owner and/or operator of a gasoline dispensing facility subject to the requirements of this Section shall keep on the facility premises and in a form acceptable to the Department, all of the following information. This information shall be retained for at least three (3) years from the date of record and shall be made immediately available to the Department upon request.

i. Permits and Applications. Copies of the Stage I and Stage II System permit applications and the current Construction/Operation Permits shall be permanently maintained.

ii. Installation and Testing Results. The test results shall be dated, and shall note the installing and test companies' names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new test results verifying proper functioning of the Stage II system.

iii. Maintenance Records. Any maintenance conducted on any part of the Stage II vapor recovery system shall be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution.

iv. Inspection Records. A file shall be maintained of all daily inspection reports including records of daily self-inspections, and any third party inspection records.

v. Compliance Records. A file shall be maintained of all compliance records. This record shall include:

A. Any warning letters and notices of violations issued by the Department to the facility.

B. Proof of attendance and completion of a training program for each person trained in accordance with paragraph (c)(2)(ii). This does not apply to the records of an employee who is no longer in service for at least one (1) year.

2. Any gasoline dispensing facility exempted from the requirements of this Section pursuant to paragraph (a)(1)(i) of this Section shall maintain records of monthly throughput, and shall furnish these records to the Department upon request. These records shall be maintained on file for a minimum of three years from the date of record.

3. The owner and/or operator of any facility containing sources subject to this Section shall comply with the requirements of Section 5 of this regulation.

**f. Compliance Testing Company Requirements**

1. Any owner and/or operator of any company that performs Stage II compliance testing within the State of Delaware shall submit all of the following information to the Department, prior to performing any Stage II compliance testing within the State of Delaware:

i. The name and business mailing address of the

Stage II compliance testing company owner and/or operator;

ii. The address and telephone number of the facility (ies) from which the daily compliance testing activities of the compliance testing company originate;

iii. A written description of the employee training systems in place at the compliance testing company to ensure required compliance tests are performed in accordance with applicable protocols and procedures.

iv. Certification by an individual who is a responsible and trained representative of the compliance testing company containing the following language verbatim:

A. I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

B. Employee training systems are in place at the company to ensure Stage II compliance tests are performed in accordance with all applicable protocols and procedures; and

C. I am fully authorized to make this attestation on behalf of this Stage II Compliance Testing Company.

2. Any company subject to the requirements of paragraph (f) of this section shall notify the Department in writing of any change to any information submitted to the Department within 14 days of the effective date of such change.

3. No person subject to the requirements of paragraph (f) of this Section shall perform any Stage II compliance test unless said person has first been trained in accordance to applicable compliance test protocols and procedures.

4. Any person subject to paragraph (f) of this Section shall certify to the owner and/or operator of the gasoline dispensing facility that each compliance test performed to meet the requirements of this section was performed in accordance with paragraph (d) of this Section. Certification shall include:

i. The date each compliance test was first performed and the test results; and

ii. An itemized list of all corrective action performed on the Stage II system. This list shall include, but not be limited to, component re-installation, tightening, repair or replacement, as necessary, for the system to pass the applicable test(s); and

iii. The date each compliance test was performed and passed; and

iv. Certification by a responsible and trained representative(s) of the compliance testing company containing the following language verbatim:

# PROPOSED REGULATIONS

A. I certify that I personally examined and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including possible fines and imprisonment; and

B. I am fully authorized to make this attestation on behalf of this Stage II Compliance Testing Company.

### g. Approved Stage II Vapor Recovery Systems

The following California Air Resources Board (CARB) executive orders are hereby adopted by reference.

Number & Date	Description
G-70-7-AD (03/22/93)	Certification of the Hasstech Model VCP-2 and VCP 2A Phase II Vapor Recovery System.
G-70-14-AA (02/08/83)	Recertification of Red Jacket Aspirator Assist Phase II Vapor Recovery System.
G-70-17-AD (05/06/93)	Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System.
G-70-18-C (08/28/79)	Modification of Certification of the Shell Model 75B1 and 75B1-R3 Service Station Phase II Vapor Recovery System.
G-70-23-AC (04/29/96)	Recertification of the Exxon Balance Phase II Vapor Recovery System.
G-70-25-AA (02/08/83)	Recertification of the Atlantic Richfield Balance Phase II Vapor Recovery System.
G-70-33-AB (03/09/84)	Certification of the Modified Hirt VCS-200 Vacuum Assist Phase II Vapor Recovery System.
G-70-36-AD (09/18/92)	Modification of Certification of the OPW Balance Phase II Vapor Recovery System.
G-70-37-B (01/22/80)	Modification of the Certification of the Chevron Balance Phase II Vapor Recovery System with OPW nozzles for Service.
G-70-38-AB (12/19/90)	Recertification of the Texaco Balance Phase II Vapor Recovery System.
G-70-48-AA (02/08/83)	Recertification of the Mobil Oil Balance Phase II Vapor Recovery System.
G-70-49-AA (02/08/83)	Recertification of the Union Balance Phase II Vapor Recovery System.
G-70-52-AM (10/04/91)	Certification of Components for Red Jacket, Hirt and Balance Phase II Vapor Recovery System.
G-70-53-AA (02/08/83)	Recertification of the Chevron Balance Phase II Vapor Recovery System.
G-70-70-AC (06/23/92)	Certification of the Healy Phase II Vapor Recovery System of Service Stations.
G-70-77 (09/15/82)	Certification of the OPW Repair/Replacement Parts and Modification of the Certification of the OPW Balance Phase II Vapor Recovery System.
Number & Date	Description
G-70-78 (05/20/83)	Certification of the E-Z Flo Nozzle Company Rebuilt Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-101-B (11/15/85)	Certification of the E-Z Flo Model 3006 and 3007 Vapor Recovery Nozzles and Use of E-Z Flo Components with OPW Models 11VC and 11 VE Vapor Recovery Nozzles.
G-70-107 (05/15/86)	Certification of Rainbow Petroleum Products Model RA3003, RA3005, RA3006 and RA3007 Vapor Recovery Nozzles and Vapor Recovery Components.
G-70-110 (01/20/87)	Certification of Stage I and II Vapor Recovery Systems for Methanol Fueling Facilities.

G-70-118-AB (03/31/95)	Certification of Amoco V-1 Vapor Recovery System.
G-70-125-AA (03/16/93)	Modification of the Certification of the Husky Model V Phase II Balance Vapor Recovery Nozzle.
G-70-127 (08/16/90)	Certification of the OPW Model 111-V Phase Vapor Recovery Nozzle.
G-70-134 (12/21/90)	Certification of the EZ Flo Rebuilt A-4000 Series and 11V-Series Vapor Recovery System.
G-70-139 (03/17/92)	Addition to the Certification of the Hirt Model VCS-200 Phase II Vapor Recovery System.
G-70-150-AE (07/12/00)	Modification of the Certification of the Gilbarco VaporVac Phase II Vapor Recovery System.
G-70-153-AD (04/03/00)	Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System.
G-70-154-AA (06/10/97)	Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System.
G-70-159-AB (07/17/95)	Modification of the Certification of the Saber Nozzle for Use with the Gilbarco VaporVac Phase II Vapor Recovery System.
G-70-163-AA (09/04/96)	Certification of the OPW VaporEZ Phase II Vapor Recovery System.
G-70-164-AA (12/10/96)	Modification to the Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System.
G-70-165 (04/20/95)	Healy Vacuum Assist Phase II Vapor Recovery System.
G-70-169-AA (08/11/97)	Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System.
G-70-170 (02/22/96)	Certification of the EZ-flo Rebuilt 5005 and 5015 for use with the Balance Phase II Vapor Recovery System.
G-70-177-AA (06/22/00)	Certification of the VCS400-7 Vacuum Assist Phase II Vapor Recovery System.
G-70-179 (07/02/97)	Certification of the Catlow IVCN-V1 Vacuum Assist Phase II Vapor Recovery System.
G-70-180 (04/17/97)	Order Revoking Certification of the Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Systems.
G-70-183 (03/04/98)	Certification of the Healy/Franklin Vacuum Assist Phase II Vapor Recovery System.
G-70-186 (10/26/98)	Certification of the Healy Model 400 ORVR Vapor Recovery System.
G-70-188 (05/18/99)	Certification of the Catlow IVCN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System.
G-70-191 (08/08/99)	Healy/Franklin VP-1000 Vapor Pump Phase II Vapor Recovery System (Healy ORVR Phase II Vapor Recovery System).
G-70-196 (12/30/00)	Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System.

## APPENDIX "J"

### Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities

#### a. PURPOSE:

The purpose of this document is to prescribe the procedures for training, systems approval, maintenance, operation, testing, inspection, recordkeeping, and reporting for Gasoline Dispensing Facilities required to be equipped

with Stage II vapor recovery systems.

b. **BACKGROUND.**

1. The implementation procedures outlined in this document are based on those specified in the U.S. Environmental Protection Agency (EPA) Office of Air Quality Planning and Standards and Office of Air and Radiation Guideline Series documents. In cases where the definitions, standards, and other provisions of the EPA guideline documents differ from this document or Regulation No. 24, "~~Control of Volatile Organic Compound Emissions~~" [hereinafter called "the regulation"], this document and the regulation shall take precedence. The use of test methods and procedures not specified in this document is acceptable if approved by the Department within the context of the provisions of subsection e., below.

2. In order for the State of Delaware to fulfill its obligations under the Federal Clean Air Act, state regulations are required to be approved by the EPA.

3. Where state regulations specify that procedures or methods shall be approved by, acceptable to or determined by the Department, or specifically provide for decisions to be made by the Department, or other similar phrasing, it may be necessary to have such actions (approvals, determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by EPA in order to make them federally enforceable.

4. It has been determined, in accordance with EPA regulations and policy, that this document is to be submitted to EPA and, upon approval, become part of the State Implementation Plan. Accordingly, any amendments to this document shall be approved through the same administrative process.

e. **GENERAL REFERENCES.**

1. Regulation No. 24, "~~Control of Volatile Organic Compound Emissions~~".

2. "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", EPA 450/3-91-022a and b, November, 1991.

3. "Enforcement Guidance for Stage II Vehicle Refueling Control Programs", U.S. Environmental Protection Agency, Office of Air and Radiation, October, 1991.

4. "Gasoline Facilities Phase I and II Technical Manual", **Appendix D**, CARB Compliance Division, Revised April, 1992.

d. **LOCATION OF REFERENCED DOCUMENTS.** The documents referenced above and any others that may be referenced throughout this document are available from the Department. A nominal fee is required.

e. **REVISION.** This document supersedes any previously issued documents relative to this matter, except for regulations.

f. **INSTRUCTIONS.**

1. **Applicability.** This document contains procedures to be used to comply with the regulations requiring Stage II vapor recovery system operator training, equipment approval, testing, inspection, maintenance, and all associated recordkeeping and reporting. The owner of the Stage II vapor recovery system (hereinafter called a "Stage II system"), installed at a gasoline dispensing facility (hereinafter called a "facility"), as required by Regulation No. 24 and Regulation No. 2, has the ultimate responsibility for compliance with the requirements of subsection f.2., below. Stage II systems must be installed at applicable facilities in all three counties in the State of Delaware: New Castle, Kent and Sussex.

2. **Procedures:**

i. **Stage II System Operation and Maintenance Training.**

A. At least one representative (an owner, facility manager, or designated employee) from each facility, or facilities under common ownership, shall attend a training program on the operation and maintenance requirements of the Stage II equipment that is selected for installation on their facility premises. Verification, such as a certificate of attendance from the training program, shall be obtained by the attendee within three (3) months of the installation of the Stage II system. The representative that completed the training is then responsible for informing all facility employees about the operation and maintenance of the Stage II system. If the representative who received the initial training/certificate leaves that facility, or the company owning several facilities, another representative shall take and successfully complete the training within three (3) months.

B. Training shall include, but need not be limited to, the following subjects:

1. Purposes and effects of the Stage II vapor control program.

2. Equipment operation and function specific to their facility's equipment.

3. Maintenance schedules and requirements for the facility's equipment.

4. Equipment warranties.

5. Equipment manufacturer contracts (names, addresses, and phone numbers) for parts and service.

C. Acceptable forms of training can include equipment manufacturer's seminars, classes or workshops offered by accredited institutions, or any other training approved by the Department. Facility owners are encouraged to request and solicit by contract training from the

manufacturer or the contractor who will install the Stage II system at their facility.

ii. ~~Facility Permitting and Stage II System Approval.~~

~~A. Owners of Stage II vapor recovery systems shall submit to the Department, no later than 60 days prior to installation, a Stage II Permit application, in accordance with Regulation No. 2. Only those system configurations as approved in accordance with the provisions of **Appendix "J1"**, will be approved. The Permit shall be placed in the facility file and kept on the premises of the facility at all times.~~

~~B. Other Requirements: Applicable facilities shall be in compliance with any other regulations, guidelines, or requirements, which affect the regulated facility's operations, including Stage I requirements.~~

iii. ~~Stage II Requirements for Installation and Testing~~

~~A. Owners of Stage II vapor recovery systems shall verify proper installation and function of the entire Stage II vapor recovery system when it is fully installed and ready for operation, by performing the tests listed below:~~

~~1. Pressure Decay/Leak Test, with a Vapor Space Tie Test, where applicable (see **Appendices "J2" and "J3"**).~~

~~2. Dynamic Backpressure (Dry) Test/Liquid Blockage (Wet) Test (see **Appendix "J3"**).~~

~~3. Testing to ensure proper functioning of nozzle automatic shut off mechanisms and flow prohibiting mechanisms, where applicable.~~

~~4. Other applicable tests specific to a Stage II system, when approved by the Department.~~

~~The Stage II system shall be tested and verified as functioning properly before it is made available to the public or to facility personnel for use. The owner of the Stage II system shall notify the Department at least ten (10) days prior to the testing of the Stage II system unless permission is granted to the contrary. It is recommended, for the protection of the facility owner, that appropriate testing be performed to verify proper installation of the underground piping before the aboveground equipment is installed.~~

~~B. The owner of the Stage II system shall submit a copy of all Stage II system test failures, as required in subsection A, above, to the Department no later than ten (10) days after the tests have been performed. The test results shall be dated and shall note the installing and test companies' names, addresses, and phone numbers.~~

~~C. The owner of a Stage II system shall perform once every five (5) years a Pressure Decay/Leak Test and a Dynamic Backpressure (Dry) Test annually on the entire Vapor Recovery System (according to the procedures in **Appendices "J2" and "J3"**). Any or all test(s) may be required after a major system replacement or modification,~~

~~or upon request of the Department after a malfunction of the Stage II system has been identified. The owner of the Stage II system shall notify the Department at least ten (10) days prior to the testing of the Stage II system unless permission is granted to the contrary. Test failures shall be reported to the Department within twenty-four (24) hours.~~

~~iv. Replacement Parts for Stage II Systems. Only those rebuilt or aftermarket parts as listed in **Appendix "J1"** (except for remote check valves and dual vapor recovery hoses) shall be used as replacement parts on Stage II vapor recovery systems, such that the system's original efficiency or durability is not degraded.~~

~~v. Maintenance Inspections of Stage II Systems.~~

~~A. The Stage II system owner and operator shall perform routine maintenance inspections of the Stage II system on a daily basis, and record the inspection results. Daily inspections shall consist of, but not be limited to, inspection of the Stage II system for the equipment defects as listed below. The presence of any equipment defect and the corrective action taken shall also be recorded in the maintenance record as specified below in subsection f.2.vii. of this document.~~

~~1. A vapor return line that is crimped, flattened, blocked, or that has any hole or slit that allows vapors to leak out.~~

~~2. A nozzle bellows that has any hole large enough to allow a ¼ inch diameter cylindrical rod to pass through it, or any slit one inch or more in length.~~

~~3. A nozzle faceplate or facecone that is torn or missing over 25% of its surface.~~

~~4. A nozzle with no automatic overfill control mechanism, or an inoperable overfill control mechanism.~~

~~5. An inoperable or malfunctioning vapor processing unit. Defects of the process unit include, but are not limited to, leaking return lines, intermittent process interruptions, and low return pressure.~~

~~B. The Stage II system owner and operator shall conspicuously post an "Out of Order" sign on any nozzle associated with any aboveground part of the Stage II system which is found to be defective. The defective equipment shall be taken out of service until it has been repaired or replaced.~~

~~vi. Operating Instructions for Users of Stage II Systems~~

~~A. The facility owner and operator shall conspicuously post operating instructions for the vapor recovery system in the gasoline dispensing area, which include the following:~~

~~1. A clear description of how to correctly dispense gasoline with the vapor recovery nozzles.~~

~~2. A warning that repeated attempts to continue dispensing gasoline after the system has indicated that the vehicle fuel tank is full (by automatically shutting~~

off) may result in spillage or recirculation of gasoline.

3. A telephone number to report problems experienced with the vapor recovery system to the Department. This number may be posted in the store so long as it is conspicuously displayed.

B. The format and content of the instructions shall be approved by the Department. The Department also reserves the right to supply instructional signs, at a nominal cost to the facility owner, for placement in the gasoline dispensing areas at each facility.

vii. Verification of Facility Compliance Through Recordkeeping. Stage II system owners and operators shall maintain various types of compliance records as listed below in subsections A through F. Records shall be kept in a form and manner acceptable to the Department, unless forms are supplied by the Department for a specific purpose. The records shall be kept updated and maintained on the facility premises in an easily accessible location for review by the Department. The Stage II system owner has the ultimate responsibility to ensure that the appropriate records are accurately maintained.

A. Station Permitting/Stage II System Approval. A copy of the Stage II System application form and permit shall be maintained permanently on the facility premises in the facility file.

B. Stage II System Installation and Testing Results. The Stage II system shall meet or exceed the requirements of the tests discussed in subsection f.2.iii., above. The test results shall be dated, and shall note the installing and test companies' names, addresses, and phone numbers. These records shall be kept on file until they are replaced with new test results verifying proper functioning of the Stage II system.

C. Stage II System Maintenance Records. Any maintenance conducted on any part of a regulated facility's system shall be required to be logged on a maintenance record. This maintenance record shall include a general part description, the date repaired or replaced, the replacement part manufacturer's information, and a description of the problem and solution. These records shall be kept on file for at least three (3) years.

D. Inspection Records. A file shall be maintained of all inspection reports issued by the Department, records of daily self-inspections, and records of monthly self-inspections. The inspection records shall be kept on file for at least three (3) years, and be organized chronologically.

E. Compliance Records. A file shall be maintained of all compliance records including warning, notices of violations, and other compliance records issued by the Department to the facility. The compliance file shall be maintained separate from the inspection file. The compliance records shall be kept on file for at least three (3) years, and be organized chronologically.

F. Training Certification. Proof of attendance

and completion of a training program as specified in subsection f.2.i.A. of this document shall be maintained and filed in the compliance records file specified in subsection f.2.vii.E. This does not apply to the records of an employee who is no longer in service for at least one (1) year.

## **SUB-APPENDICES**

### **~~J1 Certified Stage II Vapor Recovery Systems~~ ~~J2 Pressure Decay/Leak Test Procedure~~ ~~J3 Dynamic Backpressure (Dry) Test/Liquid Blockage (Wet) Test Procedure.~~**

#### **APPENDIX "J1"**

##### Certified Stage II Vapor Recovery Systems

A Stage II system will be an approved system if it is certified by the California Air Resources Board (CARB) and utilizes coaxial hoses (instead of dual vapor recovery hoses) and check valves in the nozzle for balance type systems (instead of remote check valves). If a Stage II system is certified by CARB, an Executive Order is written for that system. The order specifies the conditions, which must be met by any Stage II system installed under that certification. The specifications may include the plumbing system, an equipment list, the vapor hose configuration, and the maximum allowable pressure drop through the system.

The list of CARB certified Stage II systems and replacement parts is continually being updated; therefore, facilities are directed to may obtain the most recent copy of the list from the Department before purchasing Stage II vapor recovery equipment. A nominal fee shall be required.

#### **APPENDIX "J2"**

##### Pressure Decay/Leak Test Procedure for Verification of Proper Functioning of Stage I & Stage II Vapor Recovery Equipment

a. INTRODUCTION. This procedure is applicable to facilities that are required to recover vapors emitted during the transfer of gasoline by installing and operating Stage I and Stage II vapor recovery equipment. It is used to determine compliance with Stage I and Stage II of the Regulations for the Control of Volatile Organic Compound Emissions. Section 26 requires vapor recovery during the truck delivery of fuel to stationary storage tanks (Stage I vapor control). Air aspirated into the fuel during Stage I deliveries prevents compliance with Section 26 of the regulations. Vapor leakage from adjacent tanks with a vapor manifold to the tank receiving fuel also precludes compliance. This will not happen if the system is leak tight. Section 36 requires that Stage II vapor recovery systems are

at least 95% effective in recovering gasoline vapors, and requires the vapor recovery nozzle backpressure shut-off mechanisms not malfunction in any way. This procedure is used to check for the proper functioning of the Stage II system and shut-off mechanisms, and is also used to identify equipment defects which are listed in **Appendix "J"**.

**b. PREREQUISITES TO TESTING.** The following requirements must be met before a valid test may be performed:

1. **The Department Must Be Notified** — The appropriate office of the Department must be contacted at least two working days prior to the testing of the stage II vapor recovery system. Tests may or may not be witnessed by a Department personnel, however, if the Department is not notified of this test or any of the other required tests, then this test or any other required test may be declared invalid, in which case a retest will be required.

2. **Minimum Tank Ullage** — The ullage (vapor space) in each tank being tested must be at least 10% of the tank's capacity, but in no case less than 300 gallons per tank. If the tanks are manifolded, each tank must meet the minimum ullage requirements described above.

3. **Maximum Tank Ullage** — There is no maximum tank ullage requirement. However, since the required test duration is directly proportional to the amount of tank ullage, it is recommended that the total tank ullage be kept as close as possible to the minimum tank ullage requirements to preclude excessively long tests.

4. **Condition of the Vapor Recovery System** — The complete vapor recovery system must be installed and intact during the test. If the installation includes a Stage II vapor recovery system, all hoses, nozzles, fittings, valves, and other system components must be installed as if the system were to be placed into service. All system components must be free of all visible defects such as torn or punctured bellows, loose or torn faceplates, or defective check valves. Plugging the vapor return plumbing where a leaking vapor recovery nozzle or remote check valve has been discovered is not allowed.

5. **Restrictions On Gasoline Transfer Operations** — Transfers of gasoline into the storage tanks within one (1) hour prior to the test are prohibited. In addition, dispensing of gasoline is not allowed during the test.

**e. EQUIPMENT.** The following equipment will be needed to perform this test. (Refer to the schematic presented in **Figure 1** for a typical set-up).

1. A bottle of compressed gaseous nitrogen and pressure regulators capable of regulating final downstream pressure to 1.0 pound per square inch gauge (psig) is required. Use assorted valves, fittings, and pressure tubing as necessary. A means of providing a grounding path from the bottle of compressed nitrogen is required. The bottle shall be

grounded for safety. It is recommended that the tubing be flexible metal tubing or non-metal tubing that incorporates a grounding path throughout its length. A pressure relief device must also be installed prior to testing. The pressure relief device must be adjusted to vent at one pound per square inch gauge (27.7 inches water column gauge).

**WARNINGS:**

i. Attempting the pressure decay test without a pressure relief device may result in over-pressurizing the system, which may create a hazardous condition and may cause damage to the underground storage tanks, associated piping, and other system components.

ii. The nitrogen bottle must be securely fastened to a large, stationary object at all times. A compressed gas cylinder which falls and is damaged can easily become a lethal projectile.

2. An accurate device for measuring pressure, such as a water manometer (preferable) or a Magnehelic gauge (or equivalent) is required to measure the system pressure. This device must be graduated in increments of one-tenth (0.1) of an inch of water column pressure.

3. A stopwatch accurate to within 1 second.

**d. TEST PROCEDURE**

1. Determine the ullage of the underground storage tank (or tanks, if manifolded). Measure the gasoline gallonage in the underground storage tank(s). Calculate the ullage space for the storage tank(s) by subtracting the gasoline gallonage present from the tank capacity(ies). Note the ullage and actual tank ullage must meet the minimum tank ullage criteria specified above in Section b.2.

2. Calculate the required test duration by multiplying the total ullage (in thousand gallons) by 5.0. Record the resulting required test time (in minutes) on a data form acceptable to the Department.

3. Install the pressure relief device, grounding wire, fittings, tubing, and equipment needed to pressurize and to monitor the system vapor space (see **Figure 1**). Nitrogen can be introduced into the system through the storage tank vent pipe or through the vapor return piping.

4. For manifolded systems, install the pressure relief safety valve, set at one psig (27.7 inches of water), over the opening of the storage tank vents and cap the remaining storage tank vents. (Manifolding the vent line is prohibited since this interferes with the check of underground vapor manifolds). For non-manifolded systems, test each product vapor recovery system separately with the pressure relief safety valve installed on the vent of the storage tank being tested. (Alternative setups may be used as long as they do not interfere with the objectives of the test and have prior Department approval.)

5. Remove the Stage I adapter cap(s) on the vapor return drybreak valve(s) of the underground storage tank(s).

The system must pass the Pressure Decay/Leak Test with the drybreak cap(s) removed. It is permissible for the tank fill cap(s) to be in place on the fill adapter(s) during the test.

6. With no dispensing taking place, begin pressurizing the vapor system (or subsystem for individual vapor return line systems) to 11 inches water column gauge (inches wwg). Let the system sit for fifteen minutes to allow vapor pressure stabilization in the tank(s). Check the vent cap assembly(ies), nitrogen connector assembly, nozzles, vapor return adapter(s), and all accessible vapor connections using leak detecting solution to verify that the test equipment is leak tight. If after fifteen minutes the ullage pressure is still about 10 inches wwg, reduce the system pressure to 10.0 inches wwg. If the ullage pressure is below 10 inches wwg, then again pressurize the vapor system to 10.0 inches wwg.

7. With the system pressurized to 10.0 inches wwg, begin the test. Start the stopwatch and record the time the test began on a data form acceptable to the Department.

8. Intermediate readings may be taken to monitor the performance of the system, but the final system pressure reading must be taken at the end of the required test duration calculated above in Step d.2., and recorded on a data form acceptable to the Department. Refer to the test standards specified below in Section e. to determine the acceptability of the final system pressure result.

9. While the system is still pressurized, check the integrity of the automatic backpressure relief device on each nozzle connected to the vapor recovery system being tested by pulling on the nozzle's trigger. The backpressure relief device is acceptable if there is not resistance when the nozzle's trigger is pulled. Nozzles with defective backpressure relief devices shall be replaced.

10. At the time of installation, following the Pressure Decay/Leak Test and with the tank(s) still pressurized, complete the following Vapor Space Tie Test:

i. For systems with vapor manifolded tanks, depress the Stage I drybreak valve of each tank to see if gases are released under pressure. (A tank where gases are not released under pressure is not manifolded to the Stage II vapor piping as required by Department regulations).

ii. For non-manifolded systems, depress the drybreak valve of each tank to see if the product in the storage tank matches the product dispensed by the nozzles where checks were made of the backpressure shut-off mechanisms. This is a check to see if the underground vapor piping is crossed and goes to the wrong storage tanks. If crossed piping is indicated, verify by sending five (5) gallons of liquid down the Stage II piping while a second person listens for splashing at the tank with the drybreak open (see Liquid Blockage (Wet) Test Procedure which follows this procedure).

iii. Remove the caps of the fill risers of the storage tanks. If it appears that any gasket is damaged or missing, it must be replaced and the fill adapter tightened.

11. If the system failed to meet the criteria for passage set forth below in Section e., repressurize the system and check all accessible vapor connections using leak detecting solution. If vapor leaks in the system are encountered, repair or replace the defective component(s) and repeat the Pressure Decay/Leak Test (Steps d.6. through d.8.).

12. Depressurize the system by carefully removing the vent cap assembly(ies). Allow any remaining pressure to be relieved through the vent pipes(s).

13. If the vapor recovery system utilizes individual vapor return lines for each gasoline product or each underground storage tank, repeat the entire Pressure Decay/Leak Test for each vapor return system (Steps d.1. through d.12.).

e. TEST STANDARDS. The minimum allowable pressure decay time from 10.0 to 9.0 inches wwg shall be 5.0 minutes per 1000 gallons ullage. This means that from an initial pressure of 10.0 inches wwg, if the system pressure reading at the end of the required test duration (as calculated using the methodology specified in Section d.2.) is less than 9.0 inches wwg, the system fails.

f. REPORTING REQUIREMENTS. The test results of the Pressure Decay/Leak Test procedure must be submitted to the appropriate office of the Department within ten (10) days of the day the tests were performed. It is the ultimate responsibility of the owner of the facility to make sure that the necessary documentation is submitted to the Department; however, the Department will accept test documentation directly from the contractor performing the tests. It is also the owner's responsibility to see that the test results are maintained in a file at the gasoline dispensing facility.

### **APPENDIX "J3"**

Dynamic Backpressure (Dry) Test and Liquid Blockage (Wet) Test Procedure for Verification of Proper Functioning of Stage II Vapor Balance Recovery Systems

a. INTRODUCTION. This procedure is used to determine compliance with the emission standard in Section 36 of the Regulations for the Control of Volatile Organic Compound Emissions. Backpressures due to flow resistances in the vapor return nozzles, hoses, dispensers, and piping are often found to be the primary cause of vapor losses from the balance vapor recovery systems. All the applicable California Air Resources Board (CARB) Executive Orders specify specific flow resistance limitations that are included in this procedure. Failure of a Stage II system to meet the flow resistance limitations is a violation of Section 36 of the regulations which requires that only certified systems be installed. Furthermore, this procedure is used to detect prohibited equipment defects listed in **Appendix "J"**

entitled, "Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities", and determine if the underground vapor piping configuration complies with the applicable CARB Executive Orders as required by Section 36 and as referenced in **Appendix "J"**. The Liquid Blockage (Wet) Test described in this test procedure is also applicable for aspirator-assist Stage II vapor recovery systems.

This procedure consists of two separate tests, which must be conducted, sequentially in the order indicated below:

1. **Dynamic Backpressure (Dry) Test:** This test is used to determine the pressure drop (flow resistance) through balance Stage II vapor recovery systems (including nozzles, vapor hose, swivels, dispenser piping, and underground piping) at prescribed flow rates. The test method consists of flowing gaseous nitrogen through a calibrated test panel into the vapor recovery system at various flow rates to simulate the backpressure created during vehicle refueling. The resulting backpressures are measured near the nozzle faceplate using a pressure gauge and compared with CARB certification criteria.

2. **Liquid Blockage (Wet) Test:** This test is used to determine if the piping configuration is correct and to detect low points in the piping where the accumulation of liquid condensate may cause blockages which restrict the flow of vapors and thus decrease the system's vapor collection efficiency. The test method consists of introducing gasoline into the vapor piping at the dispenser. When the gasoline can be heard dropping into the appropriate tank, enough gasoline is deemed to have been added to create a blockage should a low point or other restriction be present. Gaseous nitrogen is introduced into the vapor piping at a rate of 60 standard cubic feet per hour (SCFH). A liquid blockage is indicated either by the needle pegging on the pressure gauge and/or wild pulsing of the needle, or a reading in excess of 0.45 inches of water gauge (inches wwg) backpressure at a flow of 60-SCFH of nitrogen.

This test is required to be performed after the entire Stage II system has been installed. Nevertheless, it is recommended for new construction that the contractor conduct this blockage test both before and after the vapor recovery piping is covered to minimize the extensive effort and cost associated with repairing the piping system should the vapor recovery system fail the test.

**b. PREREQUISITES TO TESTING.** The following requirements must be met before a valid test can be performed:

1. **The Department Must Be Notified** — The Department must be contacted at least two working days prior to the testing of the Stage II system. The test may or may not be witnessed by a Department personnel; however, if the Department is not notified of this test or any other

required test, then this test or other required tests may be declared invalid.

2. **Condition Of The Vapor Recovery System** — The vapor recovery system must be proven leak tight with the Pressure Decay/Leak Test required by the provisions of Section 36 of the regulations, and described in this Appendix, prior to conducting this test. There can be no alteration of the vapor recovery system between the time the Pressure Decay/Leak Test is conducted and the Dynamic Backpressure (Dry) and Liquid Blockage (Wet) Tests are run.

3. **Restriction Of Gasoline Dispensing Operations** — During testing of a given product, no dispensing of that product will be allowed. If the vapor spaces of the underground storage tanks are manifolded, dispensing of gasoline from the entire station shall be prohibited during testing.

**e. EQUIPMENT.** The following equipment will be needed to perform the Dynamic Backpressure (Dry) Test and the Liquid Blockage (Wet) Test:

1. A bottle of gaseous nitrogen and pressure regulators capable of regulating final downstream pressure to 5.0 pounds per square inch gauge (psig) are required. Use assorted valves, fittings, and pressure tubing as necessary. A means of providing a grounding path from the bottle of compressed nitrogen must be employed. The bottle shall be grounded for safety. It is recommended that the tubing be flexible metal tubing or non-metallic tubing that incorporates a grounding path throughout its length.

A pressure relief valve must be installed prior to testing. Attach it to the vapor piping or a storage tank vent within the piping system. The pressure relief valve must be adjusted to release at one psig (27.7 inches of water column gauge). (The diaphragms in balance system nozzles are not designed to withstand pressures exceeding one psig and may be accidentally ruptured if this procedure is not followed.)

**WARNING** — The nitrogen bottle must be securely fastened to a large, stationary object at all times. A compressed gas cylinder, which falls and is damaged, can easily become a lethal projectile.

2. A flow regulator is required that is capable of delivering nitrogen at very low pressure and at measured flow rates of 20, 60, and 100-SCFH.

3. A test panel as shown in **Figure 2** must be used for testing balance system vapor flow restrictions. The panel consists of a section of vehicle fillpipe, attached pressure gauges, a drain to drain off gasoline liquid that spills into fillpipe from the nozzle fill spout, a plug in the back through which nitrogen enters the fill neck, a flow gauge to adjust nitrogen flow control valves and attachments to connect the nitrogen bottle. The pressure drop through the Stage II system is determined using a gauge capable of accurately measuring pressures from 0 to 1 inch of water column gauge

(inches weq) and readable in increments of 0.01 inches weq.

The gauge is used to measure backpressure before and after the gasoline is introduced. Pressure is to be sensed through a port, perpendicular to the direction of flow, located as close as possible to the vapor piping. An additional simultaneous reading gauge with a 0 to 10 inches weq range is desirable to quantify excessive flow resistance.

d. TEST PROCEDURES

1. Dynamic Backpressure (Dry) Test: The farthest dispensing nozzle from the underground tanks for each product grade shall be tested using the following procedure unless otherwise instructed by the Department.

i. Prop open only the Stage I drybreak valve at the tank with the same product as the nozzle being tested. (The pressure drop is measured through the nozzle, vapor hoses, dispenser, vapor piping, and through the tank to the Stage I drybreak. This comes close to duplicating the actual flow resistances that occur during normal operations.) Set up traffic barriers in the vicinity of the drybreak valve to preclude the approach of potential ignition sources.

ii. For manifold systems, install the pressure relief safety valve, set at one psig (27.7 inches of water), over the opening of one of the storage tank vents and cap the remaining storage tank vents. (Manifolding the tank vent lines is prohibited.) For non-manifolded systems, test each product vapor recovery system separately with the pressure relief safety valve installed on the vent of the storage tank being tested. (Alternative setups may be used as long as they do not interfere with the objectives of the test and have prior Department approval.) (NOTE: The tank vents are closed because it was discovered that wind flowing over open vents 12 feet high can interfere with the pressure measurements, even with the drybreaks open. Since the Pressure Decay/Leak Test must be conducted first, the caps and relief valve are usually already in place.)

iii. If there is no remote check valve in the dispenser, proceed to Step d.1.iv., below. If the Stage II balance system employs a remote vapor check valve that can be disabled by removing the poppet on the fuel side, carefully open the fuel side of the remote vapor check valve and remove the poppet. Replace the threaded plug on the fuel side of the valve.

iv. Connect the pressure drop test device to the vapor return piping and the regulated nitrogen source. If the nitrogen is introduced through the vapor recovery nozzle, apply a film of lubricant to the faceplate of the nozzle to be tested and insert the nozzle into the fillpipes simulator of the test device. The nozzle must fit tightly.

v. Zero the pressure gauges.

vi. Adjust the pressure regulators and the pressure drop panel flow control valve to produce a nitrogen flow rate of 20 SCFH. Record the backpressure (balance system pressure drop) measured immediately upstream of the vapor

piping, i.e., at the entrance to the nozzle, on a data form acceptable to the Department.

vii. Repeat Step d.1.vi., above, with flow rates of 60 SCFH and 100 SCFH.

viii. If the system failed to meet the criteria for passage set forth below in Section e.1., make necessary replacements of or adjustment to the nozzles, vapor hoses, swivels, dispenser piping, or underground piping to bring the measured pressure drops within the appropriate standard.

ix. After completion of the Dynamic Backpressure (Dry) Test, close and cap the underground storage tank vapor drybreak valves and remove the closures from the tank vent pipes.

x. For Stage II balance systems with remote vapor check valves, carefully reassemble the remote vapor check valve by removing the plug on the fuel side and reinserting the fuel poppet. Replace the threaded fuel plug.

2. Liquid Blockage (Wet) Test: Each dispensing nozzle/vapor return piping inlet shall be tested using the following procedure unless otherwise instructed by the Department. Testing shall be done starting with the farthest dispensing nozzle from the underground storage tanks for each product.

i. Prop open only the vapor drybreak valve at the tank with the same product as the nozzle being tested. Set up traffic barriers in the vicinity of the drybreak valve to preclude the approach of potential ignition sources.

ii. Install a pressure relief safety valve set at a maximum cracking pressure of one pound per square inch gauge (27.7 inches weq) at the vent of one of the storage tanks. If the system has manifolded vapor piping, cap the vents of the other storage tanks. If the system has non-manifolded piping, be sure the pressure relief valve is on the tank that has the same product as that which is dispensed at the location where liquid is introduced to the vapor piping.

iii. For each nozzle, introduce gasoline into the vapor piping inlet located at or in each dispenser. (Don't introduce gasoline through the vapor return nozzle and vapor hose.) Have someone listening at the open Stage I drybreaks to identify the tank where liquid splashing is heard. For systems with manifolded underground vapor piping, the liquid must drop into the leaded product tank, or the lowest octane unleaded tank if there is no leaded product. For non-manifolded systems with separate underground vapor piping, the liquid shall return to the tank that has the same product as is dispensed at the nozzle where the liquid was introduced into the vapor piping. If the product at the nozzle does not match the product in the tank, the underground piping is crossed and the system fails the test. For both manifolded and non-manifolded systems, the piping must be the same as the configuration approved in the CARB Executive Orders (see **Appendix "J"**) or the facility fails the test.

iv. Restore the dispensing/vapor return system to its normal balance system configuration.

v. If there is no remote check valve in the dispenser, proceed to Step d.2.vi., below. If the Stage II balance system employs a remote vapor check valve that can be disabled by removing the poppet on the fuel side, carefully open the fuel side of the remote vapor check valve and remove the fuel poppet. Replace the threaded plug on the fuel side of the valve.

vi. Connect the pressure drop test device to the vapor return piping and the regulated nitrogen source. If the nitrogen is introduced through the vapor recovery nozzle, apply a file of lubricant to the faceplate of the nozzle to be tested and insert the nozzle into the fillpipe simulator of the test device. The nozzle must fit tightly.

vii. Zero the pressure gauges.

viii. Adjust the pressure regulators and the pressure drop panel flow control valve to produce a nitrogen flow rate of 60 SCFH. Note the response and reading of the pressure gauge immediately upstream of the vapor piping, i.e., at the entrance to the nozzle. Record the backpressure reading on a data form acceptable to the Department.

ix. If during the "Wet Test" the backpressure gauge pegs at full scale or continuously fluctuates, note this in the "Comments" section for the nozzle being tested.

x. If the system failed to meet the criteria for passage set forth below in Section e.2., make necessary repairs or adjustments to the tested piping to eliminate the blockage.

xi. For Stage II balance systems with remote vapor check valves, carefully reassemble the remote vapor check valve by removing the plug on the fuel side and reinserting the fuel poppet. Replace the threaded fuel plug.

xii. Repeat Steps d.2.1. through d.2.xi. for each nozzle/vapor return piping inlet associated with the vapor return line being tested.

xiii. After completion of the Liquid Blockage (Wet) Test for all nozzles connected to the vapor return line, close and cap the underground storage tank vapor drybreak valves and remove the closures from the tank vent pipes.

## e. TEST STANDARDS

1. ~~Dynamic Backpressure (Dry) Test: The system passes the Dynamic Backpressure (Dry) Test if at the nitrogen flow rates of 20, 60, and 100 SCFH, the flow resistance measured does not exceed the following pressure limits:~~

- i. 0.15 inches of water gauge at 20 SCFH
- ii. 0.45 inches of water gauge at 60 SCFH
- iii. 0.95 inches of water gauge at 100 SCFH

2. ~~Liquid Blockage (Wet) Test: The system fails if the backpressure gauge pegs at full scale or continuously fluctuates during the "Wet Test", or if the "Wet Test" backpressure reading at 60 SCFH flow rate exceeds the maximum standard of 0.45 inches of water gauge prescribed in the applicable CARB Executive Orders.~~

~~f. **REPORTING REQUIREMENTS.** The owner shall submit a copy of the results of all test failures to the Department within ten (10) working days of the test. It is the ultimate responsibility of the owner of the facility to make sure that the necessary documentation is submitted to the Department; however, the Department will accept test documentation directly from the contractor performing the tests. It is also the owner's responsibility to see that test results are maintained in a file at the gasoline dispensing facility. Material in this Appendix has been derived from guidance in Chapter 3.2 and Appendix C of EPA's draft CTG for Batch Processes (EPA-453/R-93-017).~~

## DIVISION OF AIR & WASTE MANAGEMENT Air Quality Management Section

Statutory Authority: 7 Delaware Code,  
Chapters 60, (7 Del.C. Ch. 60)

**SAN #01-02**

1. **TITLE OF THE REGULATION:**  
REGULATION NO. 41, "LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS", Section 2, "CONSUMER PRODUCTS".
2. **BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**  
Section 2 of Regulation No. 41 will limit the Volatile Organic Compound (VOC) content (hence, emissions) of certain consumer products. VOC limits are reduced below those now listed in the federal rule (40CFR59, Subpart C) to obtain a VOC emission reduction of one t/d over the federal rule. This regulation is patterned after a similar California rule due to go into effect in 2004. Manufacturers have indicated there will be little difficulty in complying with the new VOC limits. The implementation date of 2005 is meant to give manufacturers sufficient time to reformulate products.
3. **POSSIBLE TERMS OF THE AGENCY ACTION:**  
None.
4. **STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**  
7 Delaware Code, Chapter 60.
5. **OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**  
None.
6. **NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through September 30, 2001. Interested parties may submit comments in writing during this period to: Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Thursday, September 27, 2001 beginning at 6pm in the DNREC auditorium at the Richardson & Robbins Building, 89 Kings Highway, Dover, Delaware.

**7. PREPARED BY:**

Gene Pettingill (302) 323-4542, August 13, 2001

**REGULATION NO. 41  
(8/13/01)**

**LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS**

**Section 2 – Consumer Products**

11/11/01 (This is the likely adoption date)

**a. Applicability**

1. Except as provided in (a)(2), Section 2 shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on and after January 1, 2005 for use in the State of Delaware.

2. The provisions of Section 2 shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of Delaware, a consumer product that does not comply with the VOC standards specified in (c)(1), as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the State of Delaware, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the State of Delaware. This does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the State of Delaware.

3. The provisions of Section 2 shall not apply to a retailer who sells, supplies or offers for sale in the State of Delaware, a particular consumer product that does not comply with the VOC standards specified in (c)(1), provided that retailer demonstrates to the satisfaction of the Department that the manufacturer or distributor of that product mislead that retailer into believing that the product did comply with the VOC standards specified in (c)(1).

**b. Definitions**

Terms used but not defined in Section 2 shall have the meaning given them in Regulation No.1 or the CAA in that order of priority.

1. “ACP (alternative control plan)” means an emissions averaging program, established and managed by a responsible ACP party which allows manufacturers to sell ACP products in the State of Delaware pursuant to the requirements of Section 2.

2. “ACP emissions” means the sum of the VOC emissions from every ACP product subject to an ACP, during the compliance period specified in the ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content) \times (Enforceable\ Sales)}{100}$$

For all products except for charcoal lighter material products:

$$VOC\ Contents = \frac{[(B - C) \times 100]}{A}$$

A = net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit

C = total weight of all exempted VOCs per unit, as specified in (c)(7) through (c)(12)

For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

where,

Certified Emissions= emissions level for products specified (c)(4)(i)

Certified Use Rate = see (b)(33)

3. “ACP limit” means the maximum allowable ACP emissions during the compliance period specified in an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

$$Limit = \frac{(APC\ Standard) \times (Enforceable\ Sales)}{100}$$

where,

Enforceable Sales=see (b)(54)

ACP Standard= see (b)(6)

1,2,...,N = each product in an ACP up to the maximum N.

4. “ACP product” means any consumer product subject to the VOC standards specified in (c)(1), except those products that have been exempted under (c), or

exempted as innovative products under (d) and is covered by an ACP established by the responsible ACP party.

5. **“ACP reformulation or ACP reformulated”** means the process of reducing the VOC content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

6. **“ACP standard”** means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in (c)(1), whichever is the lesser of the two.

7. **“ACP VOC standard”** means the maximum allowable VOC content for an ACP product, determined as follows:

- i. the applicable VOC standard specified in (c)(1) for all ACP products except for charcoal lighter material;
- ii. for charcoal lighter material products only, the VOC standard for the purposes of Section 2 shall be calculated according to the following equation:

$$\text{VOC Standard} = \frac{(0.020 \text{ pound } CH_2 \text{ per start } \times 100)}{\text{Certified Use Rate}}$$

0.020   ≡   the certification emissions level  
as specified in (c)(1).

Certified Use Rate = see (b)(33)

8. **“Adhesive”** means any product that is applied for the purpose of bonding two surfaces together other than by mechanical means. “Adhesive” does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

9. **“Adhesive remover”** means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from a specific or a variety of substrates.

10. **“Aerosol adhesive”** means an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

11. **“Aerosol cooking spray”** means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

12. **“Aerosol product”** means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. “Aerosol product” does not include pump sprays.

13. **“Agricultural use”** means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. “Agricultural use” does not include the sale or use of pesticides in properly labeled packages or containers which are intended for: (and defined for the purposes of this definition only):

- (i). home use which means use in a household or its immediate environment.

- (ii) structural pest control which means a use requiring a license under Title 3 Chapter 12 of the Delaware Code.

- (iii) industrial use which means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites, and

- (iv) institutional use which means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

14. **“Air freshener”** means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. “Air freshener” does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. “Air freshener” does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

15. **“All other carbon-containing compounds”** means all other compounds which contain at least one carbon atom and are not exempt compounds or “LVP-VOC's.”

16. **“All other forms”** means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, “All other forms” include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

17. **“Anti-microbial hand or body cleaner or soap”** means a cleaner or soap designed to reduce the level of microorganisms on the skin through germicidal activity. “Anti-microbial hand or body cleaner or soap” includes, but is not limited to, anti-microbial hand or body washes/cleaners, food-handler hand washes, healthcare personnel hand washes, pre-operative skin preparations and surgical scrubs. “Anti-microbial hand or body cleaner or soap” does not include prescription drug products, antiperspirants, astringent/toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand

cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

18. **“Antiperspirant”** means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

19. **“Architectural coating”** means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

20. **“ASTM”** means the American Society for Testing and Materials.

21. **“Astringent/toner”** means any product not regulated as a drug by the United States Food and Drug Administration (FDA) which is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

22. **“Automotive brake cleaner”** means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

23. **“Automotive hard paste wax”** means a motor vehicle wax or polish which is:

- (i) designed to protect and improve the appearance of motor vehicle painted surfaces;
- (ii) a solid at room temperature; and
- (iii) contains 0% water by formulation.

24. **“Automotive instant detailer”** means a product designed for use in a pump spray that is applied to motor vehicle painted surfaces and wiped off prior to being allowed to dry.

25. **“Automotive rubbing or polishing compound”** means a product designed primarily to remove oxidation, old paint, scratches or “swirl marks”, and other defects from motor vehicle painted surfaces without leaving a protective barrier.

26. **“Automotive wax, polish, sealant or glaze”** means a product designed to seal out moisture, increase gloss, or otherwise enhance motor vehicle painted surfaces. “Automotive wax, polish, sealant or glaze” includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. “Automotive wax, polish, sealant or glaze” does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

27. **“Automotive windshield washer fluid”** means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of

cleaning, washing, or wetting the windshield. “Automotive windshield washer fluid” does not include fluids placed by the manufacturer in a new vehicle.

28. **“Bathroom and tile cleaner”** means a product designed to clean tile or surfaces in bathrooms. “Bathroom and tile cleaner” does not include products specifically designed to clean toilet bowls or toilet tanks.

29. **“Bug and tar remover”** means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

(i) biological-type residues such as insect carcasses and tree sap and,

(ii) road grime, such as road tar, roadway paint markings, and asphalt.

30. **“CARB”** means the California Air Resources Board.

31. **“Carburetor or fuel-injection air intake cleaners”** means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. “Carburetor or fuel-injection air intake cleaners” does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

32. **“Carpet and upholstery cleaner”** means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics. “Carpet and upholstery cleaner” includes, but is not limited to, products that make fabric protectant claims. “Carpet and upholstery cleaner” does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

33. **“Certified use rate”** means the usage level for charcoal lighter materials specified under (c)(4), expressed to the nearest 0.001 pound of charcoal lighter materials used per start.

34. **“Charcoal lighter material”** means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. “Charcoal lighter material” does not include any of the following: electrical starters and probes; metallic cylinders using paper tinder; natural gas; propane; and fat wood.

35. **“Colorant”** means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

36. **“Compliance period”** means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP.

37. **“Construction, panel, and floor covering**

**adhesive**” means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

(i) structural and building components that include, but are not limited to, beams, trusses, studs, paneling [drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.], ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

(ii) floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, non-resilient flooring material, mirror tiles and other types of tiles, and artificial grass.

**“Construction, panel, and floor covering adhesive”** does not include floor seam sealer.

38. **“Consumer”** means any person who purchases, or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

39. **“Consumer product”** means a chemically formulated product used by household and institutional consumers including, but not limited to: detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings.

40. **“Contact adhesive”** means an adhesive that:

(i) is designed for application to both surfaces to be bonded together;

(ii) is allowed to dry before the two surfaces are placed in contact with each other;

(iii) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and

(iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

**“Contact adhesive”** does not include rubber cements that are primarily intended for use on paper substrates.

41. **“Container/packaging”** means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. **“Container/packaging”** includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or

attached.

42. **“Contact person”** means a representative(s) that has been designated by the responsible ACP party for the purpose of reporting or maintaining any information specified in the ACP.

43. **“Crawling bug insecticide”** means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. **“Crawling bug insecticide”** does not include products designed to be used exclusively on humans or animals, or any house dust mite product. For the purposes of this definition only:

(i) house dust mite product means a product whose label, packaging or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods, and

(ii) house dust mite means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

44. **“Date-code”** means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

45. **“Delaware sales”** means the sales (net pounds of product, less packaging and container, per year) in Delaware for a specified calendar year. If direct sales data for the State of Delaware are not available, sales may be estimated by prorating national or regional sales data by population.

46. **“Deodorant”** means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

47. **“Device”** means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

48. **“Disinfectant”** means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.) and Title 3 Chapter 12 of the Delaware Code. **“Disinfectant”** does not include any of the following:

(i) products designed solely for use on human or

animals;

(ii) products designed for agricultural use;

(iii) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs;

(iv) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

49. “Distributor” means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

50. “Double-phase aerosol air freshener” means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

51. “Dry cleaning fluid” means any non-aqueous liquid product designed and labeled exclusively for use on: fabrics which are labeled “for dry clean only”, such as clothing or drapery; or S-coded fabrics. “Dry cleaning fluid” includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer’s residence or work place. “Dry cleaning fluid” does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, S-coded fabric means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.

52. “Dusting aid” means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. “Dusting aid” does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

53. “Electronic cleaner” means a product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

54. “Enforceable sales” means the total amount of an ACP product sold for use in the State of Delaware, during the applicable compliance period specified in the ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

55. “Enforceable sales record” means a written, point-of-sale record or any other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the State of Delaware during the applicable compliance period can be accurately documented. For the purposes of Section 2, “Enforceable sales records” include, but are not limited to, the following types of records:

(i) accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

(ii) accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify any data comprising such summaries is recorded by the responsible ACP party;

(iii) any other accurate product sales records approved by the Department as meeting the criteria specified in (b)(55).

56. “Engine degreaser” means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

57. “Exempt compound” means any carbon-containing compound listed as an exception to the definition of VOC’s in Regulation No. 1.

58. “Fabric protectant” means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric’s fibers. “Fabric protectant” does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled “for dry clean only” and sold in containers of 10 fluid ounces or less.

59. “Facial cleaner or soap” means a cleaner or soap designed primarily to clean the face. “Facial cleaner or soap” includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. “Facial cleaner or soap” does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

60. “Fat wood” means pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. “Fat wood” does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

61. “Flea and tick insecticide” means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. “Flea and tick insecticide” does not include products that are designed to be used exclusively on humans or animals and their bedding.

62. “Flexible flooring material” means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

63. “Floor polish or wax” means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. “Floor polish or wax” does not include spray buff products, products designed solely for the

purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

64. **“Floor seam sealer”** means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

65. **“Floor wax stripper”** means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. “Floor wax stripper” does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

66. **“Flying bug insecticide”** means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. “Flying bug insecticide” does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, moth-proofing product means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

67. **“Fragrance”** means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

68. **“Furniture maintenance product”** means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. “Furniture maintenance product” does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

69. **“Furniture coating”** means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

70. **“Gel”** means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

71. **“General purpose adhesive”** means any non-aerosol adhesive designed for use on a variety of substrates. “General purpose adhesive” does not include:

- (i) contact adhesives;
- (ii) construction, panel, and floor covering adhesives;
- (iii) adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or

vinyls); or

(iv) adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

72. **“General purpose cleaner”** means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. “General purpose cleaner” includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

73. **“General purpose degreaser”** means any product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. “General purpose degreaser” does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

- (i) sold exclusively to establishments which manufacture or construct goods or commodities; and
- (ii) labeled “not for retail sale”.

Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

74. **“General-use hand or body cleaner or soap”** means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. “General-use hand or body cleaner or soap” includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. “General-use hand or body cleaner or soap” does not include prescription drug products, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

75. **“Glass cleaner”** means a cleaning product designed primarily for cleaning surfaces made of glass. “Glass cleaner” does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

76. **“Gross Delaware sales”** means the estimated total State of Delaware sales of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party determines will provide an accurate

State of Delaware sales estimate:

(i) apportionment of national or regional sales of the ACP product to State of Delaware sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the State of Delaware's current population; or

(ii) any other documented method which provides an accurate estimate of the total current State of Delaware sales of the ACP product.

77. “Hair mousse” means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

78. “Hair shine” means any product designed for the primary purpose of creating a shine when applied to the hair. “Hair shine” includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. “Hair shine” does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

79. “Hair styling gel” means a high viscosity, often gelatinous, product that contains a resin and is designed for application to hair to aid in styling and sculpting of the hair coiffure.

80. “Hair spray” means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

81. “Heavy-duty hand cleaner or soap” means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. “Heavy-duty hand cleaner or soap” does not include prescription drug products, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

82. “Herbicide” means a pesticide product designed to kill or retard a plant's growth, but excludes products that are; for agricultural use, or restricted materials that require a permit for use and possession.

83. “High volatility organic compound (HVOC)” means any volatile organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20°C.

84. “Household product” means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

85. “Insecticide” means a pesticide product that is designed for use against insects or other arthropods, but

excluding products that are:

(i) for agricultural use;

(ii) for a use which requires a structural pest control license under Title 3 Chapter 12 of the Delaware Code; or

(iii) restricted materials that require a permit for use and possession.

86. “Insecticide fogger” means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

87. “Institutional product” or “Industrial and institutional (I&I) product” means a consumer product that is designed for use in the maintenance or operation of an establishment that:

(i) manufactures, transports, or sells goods or commodities, or provides services for profit; or

(ii) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. “Institutional product” does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

88. “Label” means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

89. “Laundry prewash” means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

90. “Laundry starch product” means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. “Laundry starch product” includes, but is not limited to, fabric finish, sizing, and starch.

91. “Lawn and garden insecticide” means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

92. “Liquid” means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in (h)(3). “Liquid” does not include powders or other materials that are composed entirely of solid particles.

93. “Lubricant” means a product designed to reduce friction, heat, noise, or wear between moving parts, or to

loosen rusted or immovable parts or mechanisms. "Lubricant" does not include:

- (i) automotive power steering fluids;
- (ii) products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes;
- (iii) two cycle oils or other products designed to be added to fuels;
- (iv) products for use on the human body or animals; or products that are
  - (a) sold exclusively to establishments which manufacture or construct goods or commodities, and
  - (b) labeled "not for retail sale".

94. **"LVP content"** means the total weight, in pounds, of LVP-VOC compounds in an ACP product multiplied by 100 and divided by the product's total net weight, in pounds, excluding container and packaging, expressed to the nearest 0.1 percent.

95. **"LVP-VOC"** means a low vapor pressure chemical compound or mixture that contains at least one carbon atom and meets one of the following:

- (i) has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310, incorporated by reference in (h)(1); or
- (ii) is a chemical "compound" with more than 12 carbon atoms, or a chemical "mixture" comprised solely of "compounds" with more than 12 carbon atoms, and the vapor pressure is unknown; or
- (iii) is a chemical "compound" with a boiling point greater than 216°C, as determined by CARB Method 310, incorporated by reference in (h)(1); or
- (iv) is the weight percent of a chemical "mixture" that boils above 216°C, as determined by CARB Method 310, incorporated by reference in (h)(1).

For the purposes of the definition of LVP-VOC, chemical compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substrate comprised of two or more chemical compounds.

96. **"Manufacturer"** means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

97. **"Medicated astringent/medicated toner"** means any product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores. "Medicated astringent/medicated toner" includes, but is not limited to, clarifiers and substrate-impregnated products. "Medicated astringent/medicated toner" does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

98. **"Medium volatility organic compound (MVOC)"** means any volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal

to 80 mm Hg when measured at 20°C.

99. **"Metal polish/cleanser"** means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To improve the appearance means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. "Metal polish/cleanser" includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. "Metal polish/cleanser" does not include: automotive wax, polish, sealant or glaze; wheel cleaner; paint remover or stripper; products designed and labeled exclusively for automotive and marine detailing; or, products designed for use in degreasing tanks.

100. **"Missing data days"** means the number of days in a compliance period for which the responsible ACP party has failed to record the required enforceable sales or VOC content data, as specified in the ACP.

101. **"Mist spray adhesive"** means any aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

102. **"Multi-purpose dry lubricant"** means any lubricant which is:

- (i) designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("Teflon") on surfaces; and
- (ii) designed for general purpose lubrication, or for use in a wide variety of applications.

103. **"Multi-purpose lubricant"** means any lubricant designed for general purpose lubrication, or for use in a wide variety of applications. "Multi-purpose lubricant" does not include: multi-purpose dry lubricants; penetrants; or, silicone-based multi-purpose lubricants.

104. **"Multi-purpose solvent"** means any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. "Multi-purpose solvent" includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. "Multi-purpose solvent" does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

105. **"Nail polish"** means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

106. **“Nail polish remover”** means a product designed to remove nail polish and coatings from fingernails or toenails.

107. **“Non-aerosol product”** means any consumer product that is not dispensed by a pressurized spray system.

108. **“Non-carbon containing compound”** means any compound which does not contain carbon atoms.

109. **“Non-resilient flooring”** means flooring of a mineral content which is not flexible. “Non-resilient flooring” includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

110. **“Non-selective terrestrial herbicide”** means a terrestrial herbicide product that is toxic to plants without regard to species.

111. **“One-product business”** means a responsible ACP party which sells, supplies, offers for sale, or manufactures for use in the State of Delaware:

(i) only one distinct ACP product, sold under one product brand name, which is subject to the requirements of (c); or

(ii) only one distinct ACP product line subject to the requirements of (c), in which all the ACP products belong to the same product category(ies) and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

112. **“Oven cleaner”** means any cleaning product designed to clean and to remove dried food deposits from oven interiors.

113. **“Paint”** means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

114. **“Paint remover or stripper”** means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. “Paint remover or stripper” does not include:

(i) multi-purpose solvents;

(ii) paint brush cleaners;

(iii) products designed and labeled exclusively to remove graffiti; and

(iv) hand cleaner products that claim to remove paints and other related coatings from skin.

115. **“Penetrant”** means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. “Penetrant” does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

116. **“Pesticide”** means any substance or mixture of

substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term “pesticide” will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider a pesticide. (EPA Office of Pesticide Programs or see <http://www.epa.gov/opppmsd1/PPISdata/index.html>.)

117. **“Pre-ACP VOC content”** means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the ACP was established by the manufacturer, based on available Delaware sales records, or other accurate records, whichever yields the lowest VOC content for the product. If a valid ACP is in force in another state, product data from that state may be used if it yields the lowest VOC content for the product.

118. **“Principal display panel or panels”** means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the “Principal display panel” shall pertain to all such “Principal display panels”.

119. **“Product brand name”** means the name of the product exactly as it appears on the principal display panel of the product.

120. **“Product category”** means the applicable category which best describes the product as listed in (b).

121. **“Product line”** means a group of products of identical form and function belonging to the same product category(ies).

122. **“Propellant”** means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

123. **“Pump spray”** means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

124. **“Reconcile or reconciliation”** means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

125. **“Reconciliation of shortfalls plan”** means the plan to be implemented by the responsible ACP party when shortfalls have occurred, pursuant to (j)(2)(vii)(j).

126. **“Responsible party”** means the company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was “manufactured for” or “distributed by”, as noted on the label.

127. **“Responsible ACP party”** means the company,

firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the "Responsible ACP party" is the party which the ACP product was "manufactured for" or "distributed by", as noted on the label.

128. **"Restricted materials"** means pesticides established as restricted materials under Title 3 Chapter 12 of the Delaware Code or under the Federal Insecticide, Fungicide and Rodenticide Act (7 U. S. C. Section 136 et seq.)

129. **"Retailer"** means any person who sells, supplies, or offers consumer products for sale directly to consumers.

130. **"Retail outlet"** means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

131. **"Roll-on product"** means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

132. **"Rubber and vinyl protectant"** means any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. "Rubber and vinyl protectant" does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

133. **"Rubbing alcohol"** means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

134. **"SCAQMD"** means the South Coast Air Quality Management District, a part of the California Air Resources Board which is responsible for regulation of air quality in the State of California.

135. **"Sealant and caulking compound"** means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. "Sealant and caulking compound" does not include:

- (i) roof cements and roof sealants;
- (ii) insulating foams;
- (iii) removable caulking compounds;
- (iv) clear/paintable/water resistant caulking compounds;
- (v) floor seam sealers;
- (vi) products designed exclusively for automotive uses; or
- (vii) sealers that are applied as continuous coatings.

For the purposes of this definition only, removable caulking compound means a compound which temporarily seals windows or doors for three to six month time intervals, and clear/paintable/water resistant caulking compounds

means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

136. **"Semisolid"** means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

137. **"Shaving cream"** means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

138. **"Shortfall"** means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. "Shortfall" does not include emissions occurring prior to the date the ACP was established.

139. **"Silicone-based multi-purpose lubricant"** means any lubricant which is: (i) designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and (ii) designed and labeled for general purpose lubrication, or for use in a wide variety of applications. "Silicone-based multi-purpose lubricant" does not include products designed and labeled exclusively to release manufactured products from molds.

140. **"Single-phase aerosol air freshener"** means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

141. **"Small business"** means an independently owned and operated business with less than 100 employees as defined by the Administrator of the federal Small Business Administration pursuant to U. S. Public Law 85-536.

142. **"Solid"** means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in (h)(3).

143. **"Special purpose spray adhesive"** means an aerosol adhesive that meets any of the following definitions:

(i) **"mounting adhesive"** means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(ii) **"automotive engine compartment adhesive"** means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees F.

(iii) **"flexible vinyl adhesive"** means an aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic

with at least five percent, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-96, incorporated by reference in (h)(5), or from product formulation data.

(iv) “polystyrene foam adhesive” means an aerosol adhesive designed to bond polystyrene foam to substrates.

(v) “automotive headliner adhesive” means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(vi) “polyolefin adhesive” means an aerosol adhesive designed to bond polyolefins to substrates.

(vii) “laminare repair/edgebanding adhesive” means an aerosol adhesive designed for:

(a) touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or,

(b) for touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition “high pressure laminate” means sheet materials which consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees F, and at pressures between 1,000 and 1,400 psi.

144. “Spot remover” means any product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. “Spot remover” does not include dry cleaning fluid, laundry pre-wash, carpet and upholstery cleaner, or multi-purpose solvent.

145. “Spray buff product” means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

146. “Stick product” means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

147. “Structural waterproof adhesive” means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type 1, Grade A), and MIL-A-4605 (Type A, Grade A and Grade C).

148. “Surplus reduction” means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in (j) (6)(iii), “Surplus reduction” does not include emissions occurring prior to the date the ACP was established by the manufacturer.

149. “Surplus trading” means the buying, selling, or

transfer of surplus reductions between responsible ACP parties.

150. “Terrestrial” means to live on or grow from land.

151. “Tire sealant and inflators” means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

152. “Total maximum historical emissions (TMHE)” means the total VOC emissions from all ACP products for which the responsible ACP party has failed to record the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to record the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

$$MHE = \left( \frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

Highest

VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording VOC content data (for any portion of the compliance period), as specified in the ACP, or the current actual VOC content, if the responsible ACP party has recorded all required VOC content data (for the entire compliance period), as specified in the ACP.

Highest Sales = the maximum one-year gross State of Delaware sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording enforceable sales records (for any portion of the compliance period), as specified in the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has recorded all required enforceable sales records (for the entire compliance period), as specified in the ACP.

Missing Data = see (b)(100)

Days  
1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to record the required enforceable sales or VOC content data as specified in the ACP.

153. **“Type A propellant”** means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

154. **“Type B propellant”** means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

155. **“Type C propellant”** means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

156. **“Undercoating”** means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. “Undercoating” includes, but is not limited to, rubberized, mastic, or asphaltic products.

157. **“Usage directions”** means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

158. **“VOC content”** means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to (h)(1) and (h)(2).

For charcoal lighter material products only,

$$\%VOC\ Content = \frac{(Certified\ Emissions\ x\ 100)}{Certified\ Use\ Rate}$$

Emissions = emissions level for products specified in (c)(4)

Certified Use Rate = usage level for products specified in (c)(4)

159. **“Wasp and hornet insecticide”** means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

160. **“Waterproofer”** means a product designed and

labeled exclusively to repel water from fabric or leather substrates. “Waterproofer” does not include fabric protectants.

161. **“Wax”** means a material or synthetic thermoplastic substance generally composed of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). “Wax” includes, but is not limited to, substances derived from the secretions of plants and animals such as carnuba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

162. **“Web spray adhesive”** means any aerosol adhesive which is not a mist spray or special purpose spray adhesive.

163. **“Wood floor wax”** means wax-based products for use solely on wood floors.

164. **“Working day”** means any day between Monday through Friday, inclusive, except for days that are federal holidays.

#### c. Standards

1. Except as provided in (a) (Applicability ), (d) (Innovative Products), (g) (Variances), and (j) (Alternative Control Plan),

(i) no person shall sell, supply, or offer for sale in the State of Delaware any consumer product manufactured on or after January 1, 2005 which contains VOC's in excess of the limits shown in Table 1 and

(ii) no person shall manufacture any consumer product on or after January 1, 2005 for use in the State of Delaware which contains volatile organic compounds in excess of the limits shown in Table 1.

2. For products that are diluted prior to use, the following shall apply:

(i) The limits specified in Table 1 shall apply to consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, only after the minimum recommended dilution has taken place. Minimum recommended dilution, for the purposes of (c)(2)(i), shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(ii) The limits specified in Table 1 shall apply to consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use only after the maximum recommended dilution has taken place.

3. The effective date of the VOC standards specified in Table 1, for those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 et seq.), is January 1, 2006. Such products also must be registered under Title 3

Chapter 12 of the Delaware Code.

4. The following requirements shall apply to all charcoal lighter material products as defined in (b)(34):

(i) Regulatory standards.

No person shall sell, supply, or offer for sale on or after January 1, 2005 any charcoal lighter material product unless at the time of the transaction:

(a) the manufacturer or distributor of the charcoal lighter material has performed the requisite testing to demonstrate that VOC emissions from ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start ("certified emissions"), using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the "SCAQMD Rule 1174 Testing Protocol"), incorporated by reference in (h)(4)(i). The provisions relating to LVP-VOC in (b)(95) and (c)(10) shall not apply to any charcoal lighter material subject to the requirements of (c)(1) and (c)(4). The Department may approve alternative test procedures which are shown to provide equivalent results to those obtained using the SCAQMD Rule 1174 Testing Protocol (h)(4).

(b) The charcoal lighter material meets the formulation criteria and other conditions specified in an applicable ACP.

(ii) The Department may, at any time, request a manufacturer to submit information concerning the charcoal lighter material manufactured for use in the State of Delaware. The manufacturer shall respond within 30 days, in writing, and shall include, at a minimum, the following:

(a) The results of testing conducted pursuant to the procedures specified in SCAQMD Rule 1174 Testing Protocol (h)(4).

(b) The exact text and/or graphics that appear on the charcoal lighter material's principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the SCAQMD Rule 1174 Testing Protocol (h)(4) for that product, unless:

1) the charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

2) the charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(c) For a charcoal lighter material which meets the criteria specified in (c)(4)(ii)(b)(i), the usage instructions shall accurately reflect the quantity of charcoal lighter material used in the SCAQMD Rule 1174 Testing Protocol (h)(4) for that product.

(d) Any physical property data, formulation

data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified an ACP.

(e) Possession of a currently effective certification by the CARB under the Consumer Products provisions of Title 17 of the California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Article 2, Section 94509(h), or from a state with a similar certification procedure, should be noted and a copy of the applicable certification decision (i.e., the Executive Order) should be included.

5. The following requirements for aerosol adhesives shall apply:

(i) In order to qualify as a special purpose spray adhesive the product must meet one or more of the definitions specified in (b)(143), but if the product label indicates that the product is suitable for use on any substrate or application not listed in (b) (143), then the product shall be classified as either a web spray adhesive or a mist spray adhesive.

(ii) If a product meets more than one of the definitions specified in (b)(143) for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in Table 1.

6. No person shall sell, supply, offer for sale, or manufacture for use in the State of Delaware any floor wax stripper unless the following requirements are met:

(i) The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3 percent by weight or less.

(ii) If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent by weight or less.

(iii) The terms "light build-up", "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

7. The medium volatility organic compound (MVOC) content standards specified in (c)(1) for antiperspirants or deodorants, shall not apply to ethanol.

8. The VOC limits specified in (c)(1) shall not apply to fragrances up to a combined level of 2 percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant.

9. The requirements of (c)(1) for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or

that have a vapor pressure of 2 mm Hg or less at 20°C.

10. The VOC limits specified in (c)(1) shall not apply to any LVP-VOC.

11. The VOC limits specified in (c)(1) shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under Regulation No. 1 or exempted under (c)(10).

12. The VOC limits specified in (c)(1) shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

13. VOC limits specified in (c)(1) shall not apply to adhesives sold in containers of 1 fluid ounce or less.

The VOC limits specified in (c)(1) for contact adhesive, construction, panel and floor covering adhesive and general purpose adhesive, do not apply to units of product, less packaging, which consist of more than one gallon.

14. The VOC limits specified in (c)(1) shall not apply to bait station insecticides. For the purpose of Section 2, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5 percent active ingredients.

15. Section 2 does not apply to sealant and caulking compound in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

16. The requirements of (e)(1) shall not apply to consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 et seq) or Title 3 Chapter 12 of the Delaware Code.

#### d. Innovative Products

1. Any manufacturer of consumer products granted an Innovative Product exemption shall be exempt from the standards in (c)(1) (Table 1).

2. Manufacturers of consumer products may seek an Innovative Products exemption in accordance with the following criteria:

(i) The Department shall exempt a consumer product from the VOC limits specified in (c)(1) if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(a) the VOC emissions from a representative consumer product which complies with the VOC limits specified in (c)(1); or

(b) the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified in

(c)(1). VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

where:

$E_R$  = The VOC emissions from the non-complying representative product, had it been reformulated.

$E_{NC}$  = The VOC emissions from the non-complying representative product in its current formulation.

$VOC_{STD}$  = the VOC limit specified in (c)(1) (Table 1).

$VOC_{NC}$  = the VOC content of the non-complying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Department.

(ii) For the purposes (d)(2)(i), representative consumer product means a consumer product which meets all of the following criteria:

(a) The representative consumer product shall be subject to the same VOC limit in (c)(1) as the innovative product.

(b) The representative consumer product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

(c) The representative consumer product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(iii) A manufacturer shall apply in writing to the Department for any exemption claimed under (d)(2)(i). The application shall include supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage.

In addition, the applicant must provide any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. Some information may be kept confidential. All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at 29 Del. C. Chapter 100), unless deemed to be confidential by the

Secretary in accordance with the procedures outlined in the FOIA regulation and codified at 29 Del. C 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the FOIA regulation which can be obtained from the Department.

If a manufacturer has a currently effective Innovative Product exemption, granted by the CARB, or granted by another state with similar Innovative Products exemption rules, the exemption decision (i.e. Executive Order) should be included in the Delaware application.

(iv) Within 30 days of receipt of the exemption application the Department shall determine whether an application is complete.

(v) Within 90 days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, an exemption from the requirements of (c)(1) will be permitted. The applicant and the Department may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Department shall notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in (d)(2)(i), and that such emissions reductions can be enforced.

(vi) In granting an exemption for a product the Department shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Department to be necessary. The Department also shall specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

(vii) For any product for which an exemption has been granted pursuant to (d)(2), the manufacturer shall notify the Department in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Department within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application.

(viii) If the VOC limits specified in (c)(1) are lowered for a product category through any subsequent rule making, all innovative product exemptions granted for products in the product category, except as provided in (d)(2)(viii), shall have no force and effect as of the effective date of the modified VOC standard. This shall not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus

the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of such limits.

(xi) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in (d)(2)(i), the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Department shall not modify or revoke an exemption without first affording the applicant an opportunity to appeal the Department's decision to the Secretary, in writing.

e. Administrative Requirements

1. Each manufacturer of a consumer product subject to Section 2 shall clearly display on each consumer product container or package, the day, month, and year when the product was manufactured, or a code indicating such date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cover/cap) without disassembling any part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in (c)(1). No person shall erase, alter, deface or otherwise remove or make illegible any date or date-code from any regulated product container. The requirements of this provision shall not apply to products containing VOCs at 0.10% by weight or less.

2. If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to (c)(1), an explanation of the code must be filed with the Department no later than twelve months prior to the effective date of the applicable standard specified in (c)(1).

3. Notwithstanding the definition of product category in (b), if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in (c)(1), then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

4. Additional Labeling Requirements for Aerosol Adhesives.

(i) In addition to the requirements specified in (e)(1), (e)(2), and (e)(3), both the manufacturer and responsible party for each aerosol adhesive product subject to Section 2 shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005.

(a) The aerosol adhesive category as specified in (c)(1) (Table 1) or an abbreviation of the category shall be displayed.

(b) The applicable VOC standard for the product that is specified in (c)(1) (Table 1), expressed as a percentage by weight, shall be displayed unless the product is included in an ACP, as provided in (j) and the product exceeds the applicable VOC standard.

If the product is included in an ACP, and the product exceeds the applicable VOC standard specified in (c)(1) (Table 1), the product shall be labeled with the term ACP or ACP product.

(c) If the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate/application that qualifies the product as special purpose shall be displayed.

(d) If the manufacturer or responsible party uses an abbreviation as allowed by (e)(4)(a), an explanation of the abbreviation must be filed with the Department before the abbreviation is used.

(ii) The information required in (e)(4)(i), shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of (e)(4)(ii), information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

#### f. Reporting Requirements

1. Upon 90 days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify including, but not limited to, all or part of the following information:

(i) the name of the responsible party and the party's address, telephone number, and designated contact person;

(ii) any claim of confidentiality which shall be handled as specified in (j)(11);

(iii) the product brand name for each consumer product and upon request by the Department, the product label;

(iv) the product category to which the consumer product belongs;

(v) the applicable product form(s) listed separately;

(vi) an identification of each product brand name and form as a household product, I&I product, or both;

(vii) separate Delaware sales in pounds per year, to the nearest pound, and the method used to calculate Delaware sales for each product form;

(viii) for reports submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All information from both companies shall be submitted by the date specified in (f)(1);

(ix) for each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1%):

(a) Total exempt compounds

(b) Total LVP-VOCs that are not fragrances

(c) Total all other carbon-containing compounds that are not fragrances

(d) Total all non-carbon-containing compounds

(e) Total fragrance

(f) For products containing greater than two percent by weight fragrance:

1) the percent of fragrance that are LVP-VOCs, and

2) the percent of fragrance that are all other carbon-containing compounds

(g) Total paradichlorobenzene;

(x) for each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(a) Each exempt compound

(b) Each LVP-VOC that is not a fragrance;

(xi) if applicable, the weight percent comprised of propellant for each product; and

(xii) if applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

2. All information submitted by responsible parties pursuant to (f) shall be handled in accordance with confidentiality procedures which are specified in (j)(11).

#### g. Variances

1. Any person who cannot comply with the requirements set forth in (c), because of extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall set forth:

(i) the specific grounds upon which the variance is sought;

(ii) the proposed date(s) by which compliance with the provisions of (c) will be achieved; and

(iii) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

2. Upon receipt of a variance application containing the information required in (g)(1), the Department shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in (c) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing also shall be submitted for publication in the Delaware Register and sent to every person who requests such notice, not less than 30 days prior

to the hearing. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. At least 30 days prior to the hearing, the variance application shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

The applicant may wish to have some information treated as confidential. Procedures for establishing confidentiality are specified in (j)(11). The Department may consider such confidential information in reaching a decision on a variance application.

3. No variance shall be granted unless all of the following findings are made:

(i) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with (c) would result in extraordinary economic hardship;

(ii) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

(iii) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

4. Any variance order shall specify a final compliance date by which the requirements of (c) will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the State of Delaware's environmental regulations.

5. A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.

6. Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of (c) after holding a public hearing in accordance with the provisions the Delaware Code.

#### h. Test Methods

1. Testing to determine compliance with the requirements of Section 2, shall be performed using CARB Method 310, "Determination of Volatile Organic Compound (VOC) in Consumer Products", adopted September 25, 1997, and amended on September 3, 1999, which is incorporated herein by reference. This method includes a number of ASTM methods.

Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval by the Department.

2. VOC content determinations using product formulation and records. Testing to determine compliance

with the requirements of Section 2 may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

(i) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(ii) For the purposes of (h)(2), the VOC content shall be calculated according to the following equation:

$$\text{where } \frac{VOC \text{ Content}}{A} = \frac{[(B - C) / A] \times 100}{\text{container and packaging}}$$

B = total weight of all VOCs per unit  
C = total weight of VOCs exempted under (c), per unit

(iii) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of Section 2.

3. Determination of liquid or solid. Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" which is incorporated by reference herein [see (b)(92) and (b)(142)].

4. Compliance determinations for charcoal lighter material products.

(i) Testing to determine compliance with the certification requirements for charcoal material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), which is incorporated by reference herein.

(ii) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-00a (August 10, 2000), "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" which is incorporated by reference in (h)(1).

5. Testing to determine plasticizer in flexible vinyl adhesive [see (b)(143)(iii)] shall be performed using ASTM E260-96 (reapproved 2001) "Standard Practice for Packed Column Gas Chromatography", incorporated herein by reference.

6. No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not

accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

7. Test Method Availability.

(i) CARB Method 310 is available on the web at <http://www.arb.ca.gov/testmeth/cptm/cptm.htm>

(ii) ASTM methods can be purchased from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555.

(iii) SCAQMD methods can be purchased from South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934. Telephone (909) 396-2162.

i. Servability

Each part of Section 2 shall be deemed severable, and in the event that any part of Section 2 is held to be invalid, the remainder of Section 2 shall continue in full force and effect.

j. Alternative Control Plan

The purpose of (j) is to provide an alternative method [an alternative control plan (ACP)] to comply with the Table 1 limits specified in (c)(1). This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified herein. Only responsible ACP parties for consumer products may establish an ACP.

1. Manufacturers of consumer products may establish an ACP in accordance with (j)(1) through (j)(12). It is not necessary to apply to the Department for authorization. The manufacturer shall submit the information requested in (j)(4)(i) upon establishing the ACP and from time to time, the Department may require additional reporting as specified in (j)(4).

2. Requirements of an ACP.

To establish an ACP the responsible ACP party shall develop a file of information containing all of the following, which shall be kept current and available to the Department upon request as specified in (j)(3)(ii) and maintained for at least three years after such records are generated:

(i) an identification of the contact persons, phone numbers, names and addresses of the responsible ACP party;

(ii) a statement of whether the responsible ACP party is a one-product business, as defined in (b)(111) or a small business as defined in (b)(141);

(iii) a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category(ies) for each distinct ACP product that is proposed for inclusion in the ACP;

(iv) for each proposed ACP product identified in

(j)(2)(iii) a supported statement that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in (j)(2)(iv)(e). To support this statement, the responsible ACP party shall include all of the following in the file:

(a) the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(b) the enforceable sales of each product using enforceable sales records as defined in (b)(55);

(c) support the validity of the enforceable sales with enforceable sales records provided by the contact persons or the responsible ACP party;

(d) calculate the percentage of the gross Delaware sales, as defined in (b)(76) which is comprised of enforceable sales;

(e) determine which ACP products have enforceable sales which are 75.0% or more of the gross Delaware sales. Only ACP products meeting this criteria shall be allowed to be sold in the State of Delaware under an ACP.

(v) for each of the ACP products identified in (j)(2)(iv)(e), the inclusion of the following:

(a) legible copies of the existing labels for each product;

(b) the VOC content and LVP content for each product reported for two different periods, as follows:

1) the VOC and LVP contents of the product at the time the ACP is established, and

2) any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of establishing the ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent (+ 10.0%) of the VOC or LVP contents reported in (j)(2)(v)(b)(1);

(vi) a written commitment obligating the responsible ACP party to date-code every unit of each ACP product included in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than 5 working days after the date an ACP was established.

(vii) an operational plan covering all the products identified under (j)(2)(iv)(e) for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(a) an identification of the compliance periods and dates for the responsible ACP party to summarize the information required by the Department in an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than 365 days. The responsible ACP party also shall choose the dates for summarizing information such that all required VOC content

and enforceable sales data for all ACP products shall be summarized at the same time and at the same frequency;

(b) an identification of specific enforceable sales records summarized in the operational plan for the compliance period dates specified in (j)(2)(vii)(a);

(c) for a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party(ies) that they will transfer the surplus reductions to the small business or one-product business upon adoption of the ACP;

(d) for each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.

(e) the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect;

(f) a detailed write-up showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This write-up shall use the equations specified in (b)(2) and (b)(3) for projecting the ACP emissions and ACP limits during each compliance period. It shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of Delaware during each compliance period;

(g) a certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of Section 2;

(h) written explanations of the date-codes that will be displayed on each ACP product's container or packaging;

(i) a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP;

(j) a reconciliation of shortfalls plan which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

1) a clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75%, and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

2) a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in (j)(2)(vii)(j); and

3) a commitment to provide any record or information requested by the Department to verify that the shortfalls have been completely reconciled.

(k) a declaration, signed by a legal representative for the responsible ACP party which states that all information and plans included in the ACP are true and correct.

### 3. Record Keeping and Availability of Requested Information.

(i) All information specified in an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

(ii) The records specified in (j)(4)(i) shall be made available to the Department or an authorized representative:

(a) immediately upon request, during an on-site visit to a responsible ACP party; or

(b) within five working days after receipt of a written request from the Department; or

(c) within a time period mutually agreed upon by the Department and the responsible ACP party.

### 4. Reporting

(i) Upon establishing an ACP, the responsible ACP party shall notify the Department, in writing, that an ACP has been established and shall submit to the Department all of the information specified in (j)(2).

(ii) At any time that the information specified in (j)(2) is modified for any reason, the Department shall be promptly notified of the change.

(iii) When a shortfall occurs, the responsible ACP party shall promptly notify the Department. When the shortfall is reconciled, the responsible ACP party will notify the Department.

(iv) When a VOC exceedance occurs, the responsible ACP party shall promptly notify the Department of the exceedance and plans for correction. Any exceedance is a violation of Section 2 and may result in penalties.

### 5. Violations.

(i) Any person who commits a violation of Section 2 may be subject to the penalties specified in applicable Delaware laws and regulations. Failure to meet any requirement of Section 2 or any condition of an ACP shall constitute a single, separate violation of Section 2 for each day until such requirement or condition is satisfied, except as otherwise provided in (j)(5)(ii) through (j)(5)(viii).

(ii) False reporting of any information contained in an ACP, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of Section 2 for each day that the ACP is in effect.

(iii) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP shall constitute a single, separate violation of the requirements of Section 2 for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the State of Delaware.

(iv) Any of the following actions shall each constitute a single, separate violation of the requirements of Section 2 for each day after the applicable deadline until the requirement is satisfied:

(a) Failure to record data (i.e., "missing data") or failure to record data accurately (i.e., "inaccurate data") in writing to the Department regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified by the Department;

(b) False reporting of any information submitted to the Department for determining compliance with the ACP requirements;

(c) Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP, within 30 working days from the date of written notification of a shortfall;

(d) Failure to completely reconcile the shortfall as specified in the ACP, within 90 working days from the date of written notification of a shortfall.

(v) False reporting or failure to report any of the information specified in (j)(6)(ii)(i), or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation of the requirements of Section 2 for each day during the time period for which the surplus reductions are claimed to be valid.

(vi) Except as provided in (j)(6), any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of Section 2 for each day of the applicable compliance period. The responsible ACP party shall determine whether an exceedance of the ACP limit has occurred as follows and promptly report the results to the Department:

(a) If the responsible ACP party has recorded all required information for the applicable compliance period specified in an ACP, then the manufacturer shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

(b) If the responsible ACP party has failed to provide all the required information specified in the ACP for

an applicable compliance period, determining whether an exceedance of the ACP limit has occurred shall be done as follows:

1) for the missing data days, calculate the total maximum historical emissions, as specified (b)(152);

2) for the remaining portion of the compliance period which are not missing data days, calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

3) the ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to (j)(5)(vi)(b)(1), and the emissions determined pursuant to (j)(5)(vi)(b)(2);

(c) calculate the ACP limit for the entire compliance period using ACP standards applicable to each ACP product and enforceable sales records specified in (j)(5)(vi)(b)(2). Enforceable sales for each ACP product during missing data days, as specified in (j)(5)(vi)(b)(1), shall be zero (0).

(d) an exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to (j)(5)(vi)(b)(3), exceeds the ACP limit, determined pursuant to (j)(5)(vi)(b)(4).

(vii) If a violation specified in (j)(5)(vi) occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$NEV = (ACP \text{ Emissions} - ACP \text{ Limit}) \times 1 \text{ Violation} / 40 \text{ Pounds}$$

<u>NEV</u>	=	<u>NUMBER OF ACP LIMIT VIOLATIONS</u>
<u>ACP emissions</u>	=	<u>the ACP emissions for the compliance period</u>
<u>ACP limit</u>	=	<u>the ACP limit for the compliance period</u>

The responsible ACP party may determine the number of ACP limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP limit violations pursuant to (j)(5)(vii).

(viii) In assessing the amount of penalties for any violation occurring pursuant to (j)(5)(i) through (j)(5)(vii), circumstances covered in applicable laws and regulations of the State of Delaware shall be taken into consideration.

(ix) A cause of action against a responsible ACP party under (j)(5) shall be deemed to accrue on the date(s) when the records establishing a violation are received by the Department.

(x) The responsible ACP party is fully liable for

compliance with the requirements of Section 2, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of Section 2.

**6. Surplus Reductions and Surplus Trading.**

(i) Any surplus reductions of VOC achieved by a responsible ACP party operating under an ACP may be represented in the form of certificates which can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in (j)(6)(ii). All surplus reductions shall be calculated at the end of each compliance period within the time specified in the established ACP. Surplus reduction certificates shall not constitute instruments, securities, or any other form of property.

(ii) The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

(a) For the purposes of Section 2, VOC reductions from sources of VOC other than consumer products subject to the VOC standards specified in (c)(1) may not be used to generate Surplus reductions;

(b) Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under a prior established ACP;

(c) Surplus reductions may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to (j)(10);

(d) Surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;

(e) Except as provided in (j) (6)(ii)(f)(2), only small or one-product businesses selling products under an established ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

(f) While valid, surplus reductions can be used only for the following purposes:

1) to adjust either the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

2) to be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfall plan pursuant to (j)(2)(vii)(j).

(g) A valid surplus reduction shall be in effect starting five (5) days after the date of identification by the responsible ACP party, for a continuous period equal to the

number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

(h) At least five (5) working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include all of the following:

1) the date the transfer is to become effective;

2) the date the surplus reductions being traded are due to expire;

3) the amount (in pounds of VOCs) of surplus reductions that are being transferred;

4) the total purchase price paid by the buyer for the surplus reductions;

5) the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions;

6) a copy of the surplus reductions certificate issued by the responsible ACP party, signed by the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non traded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in (j)(6).

(i) Surplus reduction credits shall only be traded between ACP product(s) for consumer products.

**7. Reconciliation of Shortfalls.**

(i) At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period. Upon receipt of this information, the Department shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

(ii) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP, within 30 working days from the date of written notification of a shortfall by the Department.

(iii) All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP.

(iv) All requirements specified in the ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

**8. Notification of Modifications to an ACP by the**

## Responsible ACP Party.

(i) The responsible ACP party shall notify the Department, in writing, of any change in an ACP product's:

- (a) product name,
- (b) product formulation,
- (c) product form,
- (d) product function,
- (e) applicable product category(ies),
- (f) VOC content,
- (g) LVP content,
- (h) date-codes, or
- (i) recommended product usage directions, no

later than 15 working days from the date such a change occurs.

For each modification, the notification shall fully explain the following:

- (a) the nature of the modification;
- (b) the extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;
- (c) the extent to which the ACP emissions and ACP limit specified in the ACP will be changed for the applicable compliance period; and
- (d) the effective date and corresponding date-codes for the modification.

(ii) Except as otherwise provided in (j)(6)(ii), the responsible ACP party shall notify the Department, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of (j)(2). The responsible ACP party shall provide such notification to the Department no later than 15 working days from the date such information is known to the responsible ACP party.

## 9. Modification of an ACP by the Department

(i) If the Department determines that:

- (a) the enforceable sales for an ACP product are no longer at least 75.0% of the gross Delaware sales for that product, or
- (b) the information submitted pursuant to a request is no longer valid, or
- (c) the ACP emissions are exceeding the ACP limit specified in the ACP,

then the Department shall modify the ACP as necessary to ensure that the ACP meets all requirements of Section 2 and that the ACP emissions will not exceed the ACP limit.

The Department shall not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be modified.

(ii) If any applicable VOC standards specified in (c)(1) are modified in a future rule making, the responsible ACP party shall modify the ACP limit specified in the ACP to reflect the modified ACP VOC standards as of their

effective dates.

## 10. Cancellation of an ACP

(i) An ACP shall remain in effect until:

- (a) the ACP reaches the specified expiration date;
- (b) the ACP is modified by the responsible ACP party;
- (c) the ACP is modified by the Department, as provided in (j)(9);
- (d) the ACP includes a product for which the VOC standard specified in (c)(1) is modified by the Department in a future rule making, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date(s) of the modified standard;
- (e) the ACP is cancelled pursuant to (j)(10)(ii).

(ii) The Department shall cancel an ACP if any of the following circumstances occur:

- (a) the responsible ACP party demonstrates to the satisfaction of the Department that the continuation of the ACP will result in an extraordinary economic hardship;
- (b) the responsible ACP party violates the requirements of the ACP, and the violation(s) results in a shortfall that is 20.0% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20.0% or more);
- (c) the responsible ACP party fails to meet the requirements of (j)(7) (Reconciliation of Shortfalls) within the time periods specified in (j)(7); or
- (d) the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

(iii) The Department shall not cancel an ACP pursuant to (j)(10)(ii) without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be canceled.

(iv) The responsible ACP party for an ACP which is canceled pursuant to (j)(10)(ii) and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

- (a) all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of (j)(7), and
- (b) all ACP products subject to the ACP shall be in compliance with the applicable VOC standards in (c)(1) immediately upon the effective date of ACP cancellation.

(v) Any violations incurred pursuant to (j)(5) shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to (j)(8), (j)(9), or (j)(10).

## 11. Treatment of Information

The information required by (j)(2)(i), (j)(2)(ii), and (j)(6)(ii)(h) is public information which may not be claimed as confidential. All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at 29 Del. C. Chapter 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at 29 Del. C 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the FOIA regulation which can be obtained from the Department.

**12. Other Applicable Requirements.**

A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(i) The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP. The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(ii) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP and Section 2.

**TABLE 1**  
**VOC CONTENT LIMITS FOR CONSUMER PRODUCTS**  
**(percent volatile organic compounds by weight)**

<u>PRODUCT CATEGORY</u>	<u>VOC CONTENT LIMIT</u>
<b>Adhesives</b>	
Aerosol	
Mist Spray	65
Web Spray	55
Special Purpose	
(mounting, auto engine compartment & flexible vinyl)	70
(polystyrene foam & automotive headliner)	65
(polyolefin & laminate repair/edgebonding)	60
Contact	80 *
Construction, Panel, and Floor Covering	15
General Purpose	10 *
Structural Waterproof	15 *
<b>Aerosol Cooking Spray</b>	18 *
<b>Air Fresheners</b>	

Double-Phase Aerosols		25
Liquids/Pump Sprays		18 *
Single-Phase Aerosols		30
Solids/Gels		3 *
<b>Antiperspirants</b>		
Aerosol	(% HVOC)	40
	(% MVOC)	10
Non-Aerosol	(% HVOC)	0
	(% MVOC)	0
<b>Automotive Brake Cleaners</b>		45
<b>Automotive Rubbing or Polishing Compound</b>		17
<b>Automotive Wax, Polish, Sealant or Glaze</b>		
Hard Paste Waxes		45
Instant Detailers		3
All Other Forms		15
<b>Automotive Windshield Washers<sup>35</sup> *</b>		
<b>Bathroom and Tile Cleaners</b>		
Aerosols		7 *
All Other Forms		5 *
<b>Bug and Tar Remover</b>		40
<b>Carburetor or Fuel-Injection Air Intake Cleaners</b>		45
<b>Carpet and Upholstery Cleaners</b>		
Aerosols		7
Non-Aerosols (dilutables)		0.1
Non-Aerosols (ready to use)		3
<b>Charcoal Lighter Material</b>		see (c)(4) *
<b>Deodorants</b>		
Aerosol	(% HVOC)	0
	(% MVOC)	10
Non-Aerosol	(% HVOC)	0
	(% MVOC)	0
<b>Dusting Aids</b>		
Aerosols		25
All Other Forms		7 *
<b>Engine Degreasers</b>		
Aerosol		35
Non-Aerosol		5
<b>Fabric Protectants</b>		60
<b>Floor Polishes and Waxes</b>		
Products for Flexible Flooring Materials		7 *
Products for Non-Resilient Flooring		10 *
Wood Flooring		90 *
<b>Floor Wax Strippers (non-aerosols)</b>		see (c)(6)
<b>Furniture Maintenance Products</b>		
Aerosols		17
All Other Forms (except solid or paste)		7
<b>General Purpose Cleaners</b>		
Aerosols		10
Non-Aerosols		4
<b>General Purpose Degreasers</b>		
Aerosols		50
Non-Aerosols		4
<b>Glass Cleaners</b>		
Aerosols		12 *

Non-Aerosols	4
<b><u>Hair Mousses</u></b>	<u>6</u>
<b><u>Hairshines</u></b>	<u>55</u>
<b><u>Hairsprays</u></b>	<u>55</u>
<b><u>Hair Styling Gels</u></b>	<u>6 *</u>
<b><u>Heavy Duty Hand Cleaner Soap</u></b>	8
<b><u>Insecticides</u></b>	
<u>Crawling Bug (aerosol)</u>	<u>15</u>
<u>Crawling Bug (all other forms)</u>	<u>20</u>
<u>Flea and Tick</u>	<u>25 *</u>
<u>Flying Bug (aerosol)</u>	<u>25</u>
<u>Flying Bug (all other forms)</u>	<u>35</u>
<u>Foggers</u>	<u>45 *</u>
<u>Lawn and Garden (non-aerosol)</u>	<u>3</u>
<u>Lawn and Garden (all other forms)</u>	<u>20</u>
<u>Wasp and Hornet</u>	<u>40</u>
<b><u>Laundry Prewash</u></b>	
<u>Aerosols/Solids</u>	<u>22 *</u>
<u>All other forms</u>	<u>5 *</u>
<b><u>Laundry Starch Products</u></b>	<u>5 *</u>
<b><u>Metal Polishes/Cleaners</u></b>	<u>30</u>
<b><u>Multi-Purpose Lubricant (excluding solid or semi-solid products)</u></b>	<u>50</u>
<b><u>Nail Polish Remover</u></b>	<u>75</u>
<b><u>Non-Selective Terrestrial Herbicide (non-aerosol)</u></b>	<u>3</u>
<b><u>Oven Cleaners</u></b>	
<u>Aerosols &amp; Pump sprays</u>	<u>8 *</u>
<u>Liquids</u>	<u>5 *</u>
<b><u>Paint Removers and Strippers</u></b>	<u>50</u>
<b><u>Penetrants</u></b>	<u>50</u>
<b><u>Rubber and Vinyl Protectants</u></b>	
<u>Aerosols</u>	<u>10</u>
<u>Non-Aerosols</u>	<u>3</u>
<b><u>Sealants and Caulking Compounds</u></b>	<u>4</u>
<b><u>Shaving Creams</u></b>	<u>5 *</u>
<b><u>Silicone-Based Multi-Purpose Lubricants (excluding solid or semi-solid products)</u></b>	<u>60</u>
<b><u>Spot Removers</u></b>	
<u>Aerosols</u>	<u>25</u>
<u>Non-Aerosols</u>	<u>8</u>
<b><u>Tire Sealants and Inflaters</u></b>	<u>20</u>
<b><u>Undercoatings (aerosols)</u></b>	<u>40</u>

\* Limits and definition unchanged from EPA rule at 40CFR59 Subpart C, "National Volatile Organic Compound Emission Standards for Consumer Products", which remains in force.

## DEPARTMENT OF PUBLIC SAFETY

### DIVISION OF BOILER SAFETY

Statutory Authority: 29 Delaware Code,  
Section 8210 (29 Del.C. § 8210)

#### Notice

There is an open meeting scheduled by the Division of Boiler Safety, for comments on the proposed changes in the division's Rules and Regulations. The general public is invited to make comments and suggestions on these changes.

Date: October 3, 2001  
Time: 10:00 am till 12:00 PM  
Location: Public Safety Building  
303 Transportation Circle  
Dover, DE 19901  
2<sup>nd</sup> Floor Conference Room

A copy of the proposed Rules and Regulations is available by contacting the Division of Boiler Safety at the above address or by telephoning 302-744-2735. Contact James B. Harlan, Director, for any further information at 302-744-2738.

#### **1.0 Definitions**

**"The Act"**: 29 Del C. §8210.

**Accident**: An unexpected event resulting from (a) unknown causes, (b) carelessness, (c) unawareness, causing injury, death or property damage.

**Alteration**: Any change in the item described on the original Manufacturers' Data Report which affects the pressure containing capability of the pressure retaining item. Non-physical changes such as an increase in the maximum allowable working pressure (internal or external) or design temperature of a pressure retaining item shall be considered an alteration. A reduction in minimum temperature such that additional mechanical tests are required shall also be considered an alteration.

**ASME**: American Society of Mechanical Engineers.

**ANSI**: American National Standards Institute.

**AIA**: Authorized Inspection Agency as defined in NBIC.

**AI**: Authorized Inspector includes the Director, a Deputy Inspector or Special Inspector holding a current National Board Commission, with an "A" or "B" endorsement, and a Delaware Certificate of Competency.

**Antique Boiler**: Boilers manufactured prior to January 1, 1924, and used solely for display and demonstration purposes.

**APA:** Administrative Procedures Act.

**Automatically Fired Boiler:** A boiler that cycles automatically in response to a control system with no operator.

**Boiler:** A closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water, where these units are separate from processing systems, and are complete within themselves.

- **Power boiler:** A vessel in which steam or other vapor is generated at a pressure of more than fifteen (15) PSIG.
- **High temperature water boiler:** A water boiler operating at a pressure exceeding
- 160 psi and/or temperatures in excess of 250 degrees F.
- **Heating boiler** A steam boiler operating at pressures not exceeding fifteen (15)
- psi, or a hot water boiler operating at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees F, which is supplied to an external heating system.
- **Hot Water Supply Boiler:** A vessel used to heat water for purposes other than
- space heating, where the water is used external to itself, at pressures not exceeding 160 psi, and/or temperatures not exceeding 250 degrees F, at or near the boiler outlet. ASME Stamping would be ASME Section IV, H.
- **Pool Heater:** An appliance designed for heating non-potable water stored at atmospheric pressure such as water in swimming pools, spas, hot tubs, and similar applications.
- **Water Heater:** A closed vessel in which water is heated by gas, oil, electric, or
- some other fuel supply, and the water is used externally to itself for potable water supply, or used for potable water and space heating (as outlined in Section 14 of these Rules and Regulations), operating at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees F. ASME Stamping would be ASME Section IV, HLW.

**Certificate of Competency:** A certificate issued by the Division to an inspector after passing the Delaware test for inservice inspections, and to an inspector holding a valid National Board Commission for "Shop" inspections only. See Delaware Commission.

**Certificate of Inspection:** A printed document, issued by the Division of Boiler Safety, signifying the object has met Code requirements after receipt of a report from a National Board Commissioned or Owner/User Inspector, stating the conditions of the object are satisfactory to issue a certificate. The inspector will issue a current decal bearing a date of inspection. The certificate becomes valid upon payment of the required inspection and/or certificate fees.

**Commission:**

- **National Board Commission** a certificate issued by the National Board to an individual.
- **Delaware Commission** a Certificate of Competency issued by the Division of Boiler Safety to a National Board Commissioned Inspector employed by the State of Delaware, by an insurance company licensed to sell boiler and machinery insurance in the State of Delaware, or a recognized Delaware Owner/User Agency.

**Council:** Refers to the members of the Governor's "Council on Boiler Safety". 29 Del.C. §8211

**Decal:** A three-part report filled out by inspector at time of inspection. White copy is left at location, yellow copy is submitted to Division of Boiler Safety, and pink copy is inspectors'. This is notification the object has been inspected.

**Department:** Department of Public Safety.

**Division:** Division of Boiler Safety.

**Deputy Inspector:** An inspector employed by the State of Delaware, Division of Boiler Safety.

**Director:** Director of the Division of Boiler Safety.

**Existing Installations:**

Any power or miniature boiler installed before January 1, 1924.

- Any electrically heated pressure vessel installed before August 8, 1953.
- Any steam heating, hot water supply or hot water heating boiler installed before May 11, 1954.
- Any pressure vessel installed before June 30, 1974.

**External inspection:** An inspection of the exterior surfaces as defined in NBIC, when a boiler or pressure vessel is connected for use.

**External piping:**

- Power boilers- any pipe or fitting connected between the boiler and those limits defined in ASME B31.1.
- Low pressure boilers and pressure vessels any pipe or fitting connected between the boiler, water heater, or pressure vessel and the first circumferential joint.

**F:** Fahrenheit.

**HLW:** Part of ASME Code, Section IV, dealing with potable water heaters.

**Inspector:** A Deputy Inspector, Special Inspector, or an Owner/User Inspector.

**Internal inspection:** An inspection of the interior surfaces of a boiler or pressure vessel, as defined in the NBIC, with implementation of preparation and safety procedures.

**MTR:** Material Test Report.

**MAWP:** Maximum Allowable Working Pressure.

**National Board:** "The National Board of Boiler and Pressure Vessel Inspectors".

**National Board Commissioned Inspector:** An individual who holds a valid and current National Board Commission.

**NBIC:** National Board Inspection Code The manual for boiler and pressure vessel inspectors, published by the National Board of Boiler and Pressure Vessel Inspector, from which copies may be obtained.

**NDE:** NonDestructive Examination.

**Owner or User:** Any person, firm, or corporation owning or operating any boiler, pressure vessel or nuclear installation within this state.

**Owner/User Inspector:**

- An Inspector employed by an Owner/User Agency, as described in the NBIC.
- A Delaware Commissioned Inspector who has been issued a Delaware Certificate of Competency and works for a recognized Owner/User in the State of Delaware.

**Place of public assembly:** Any establishment, building or any portion thereof within this State intended and used for occupation by persons while employed therein for compensation of any kind, and any commercial structure or location to which the public has access. This shall include, but not be limited to apartment buildings, schools, day care centers, nursing homes, hospitals, theaters, houses of worship and sporting arenas.

**psi:** pounds per square inch

**psig:** pounds per square inch gauge.

**Portable Boiler:** An internally fired boiler primarily intended for temporary location, and the construction and usage of which is obviously portable.

**Pressure Retaining Item (PRI):** Any boiler, pressure vessel, piping, or material used for the containment of pressure, either internal or external. The pressure may be obtained from an external source, or by the application of heat from a direct source, or any combination thereof.

**Pressure Vessel:** Containers for the containment of

pressure, either internal or external. The pressure may be obtained from an external source or by the application of heat from a direct or indirect source, or any combination thereof.

**Repair:** The work necessary to restore pressure retaining items to a safe and satisfactory condition such that the existing design requirements are met.

**Secretary:** The Secretary of the Department of Public Safety.

**Shop Review:** A general survey and examination of a boiler or pressure vessel manufacturing or repair firm's facilities, methods and records. The examination is performed by a designee of the ASME, and/or the National Board.

**Special Inspector:** A National Board Commissioned Inspector, or an AI, employed by an insurance company authorized to write boiler and pressure vessel insurance in Delaware.

**Standard Boiler or Pressure Vessel:** A boiler or pressure vessel which bears the stamp of the ASME and which are registered with the NB. Such items shall bear the ASME Code Symbol Stamp and the NB Registration number.

Note: Cast iron heating boilers are exempted from National Board Registration.

**State Special Number:** A Delaware Registration Number assigned to a boiler or pressure vessel of nonstandard design.

## 2.0 Scope

2.1 Any boiler or pressure vessel within the scope of these rules and installed in a place of public assembly, shall be subject to field inspection. Exempt boilers and Pressure Vessels are listed in the Administrative Section of these Rules and Regulations.

## 3.0 Codes and Standards:

3.1 The State of Delaware Division of Boiler Safety has adopted the ASME Boiler and Pressure Vessel Codes for construction and stamping, including CSD-1 for controls and safety devices. Standards referenced by these rules are: ASME Code Sections I, II, III (all Sections), IV, VIII (Div. 1, 2 and 3), X, XI, CSD-1, B31.1 (for boiler external piping), and Code Cases. Interpretations are not part of the ASME and National Board Codes and will be handled on a case by case basis.

3.2 The National Board Inspection Code has been adopted for repairs and alterations.

3.3 All Standards listed above refer to the latest accepted edition and addenda.

**4.0 Administration****4.1 Duties of Inspectors and Insurance Companies:****4.1.1 Inspectors shall:**

4.1.1.1 Submit completed boiler or pressure vessel reports to the division within 30 days of inspection. First time inspections shall be submitted on the National Board Form NB-7 or the Delaware First Inspection Report (Sample Form Exhibit 5). Electronic reporting does not require submission of hard copies.

4.1.1.2 Report immediately to the Director the name of the owner or user who is operating any boiler or pressure vessel (a) without a valid certificate of inspection, or, (b) in an unsafe condition.

4.1.1.3 Report to the Director all accidents involving boilers and pressure vessels when informed of such accidents by the owner/user.

4.1.2 It shall be the duty of the insurance company to notify the Division of installations on which insurance is accepted, refused, cancelled, or suspended. Such reports shall give detailed account of any unsafe conditions and shall be submitted within 30 days of such insurance acceptance or refusal.

**4.2 Shop Inspections:**

4.2.1 The shop inspections required by any applicable section of the ASME Boiler & Pressure Vessel Code shall be made by an Inspector who holds a valid commission issued by the National Board of Boiler & Pressure Vessel Inspectors, and having a valid "A" or "B" endorsement. A Certificate of Competency card, issued by the Division of Boiler Safety, is required for all inspectors. An AI inspecting nuclear components requires the "N" endorsement.

**4.3 Shop Reviews:**

4.3.1 ASME and National Board Shop reviews shall be conducted by an ASME representative, a National Board representative, or the Division of Boiler Safety.

**4.4 Examining Board:**

4.4.1 The Council on Boiler Safety shall act as the "Examining Board" as required by the National Board for the purpose of administering the National Board test for the certification of competency. With the Council on Boiler Safety member's approval, the Director may appoint alternates for the National Board examination.

**4.5 Conflict of interest:**

4.5.1 An Inspector shall not engage in the sale of any services, article or device relating to boilers, pressure vessels, or their appurtenances.

**4.6 Appeals:**

4.6.1 The Director of Boiler Safety may suspend or revoke a Certificate of Competency or a Commission, after

due investigation for willful falsification of any matter or statement contained in his application, or in a report of any inspection made by him/her, and for any other finding of improper conduct. Written notice of any such suspension or revocation as required by 29 Del C. § 1031(c), shall be given by the Director to the inspector and his employer. An inspector whose certificate of competency or commission has been suspended or revoked shall be given ten days to appeal the decision to the Secretary of Public Safety. The notice of any proceedings shall conform to 29 Del. C. § 10122.

**4.6.2 Appeal from decision of Inspectors**

4.6.2.1 If the owner or user of any boiler, pressure vessel or nuclear installation disagrees with the Inspector, as to the necessity for shutting it down for making repairs or alterations to it, or taking any other measures for safety that may be requested by the Inspector, the owner or user may appeal the decision of the Inspector to the Director within an acceptable time limit as determined by the Director according to the severity of the violation. The owner/user will be notified of the time limit for appeal in the notice of violation. In case of a disagreement with the Director, an appeal may be filed with the Secretary, who will review the decision and may order another inspection, as the Secretary may deem necessary to decide the issue.

**4.7 Accident**

4.7.1 The owner or user shall notify the Division of Boiler Safety when an accident occurs that renders a boiler or pressure vessel inoperative. In the case of a serious accident, as in a personal injury or an explosion, notice shall be given immediately by telephone. No boiler, pressure vessel, or parts thereof involved in the accident, shall be removed or disturbed before an investigation can be conducted, except for the purpose of conserving human life and limiting consequential damage.

**5.0 Manufacturers****5.1 Construction Standards**

5.1.1 Boilers, pressure vessels, nuclear components and component parts to be installed for use in the State of Delaware, shall be designed, fabricated, inspected, stamped and installed in accordance with current applicable Sections of the ASME Boiler and Pressure Vessel Code, and these Rules and Regulations.

**5.2 Stamping**

5.2.1 Boilers, pressure vessels and nuclear components shall be stamped with the applicable ASME Code stamping and a National Board number or a Delaware Special number, or the ASME Code Symbol and the word ("USER"), and if electrically heated a nationally recognized

testing agency, such as, but not limited to the Underwriters Laboratory. Note: Cast Iron boilers do not require National Board Registration.

5.2.2 The required stamping shall be visible for inspection and not permanently covered.

#### 5.3 State Special:

5.3.1 If a boiler, pressure vessel or nuclear component is of special design and can not be built to the ASME Code, and have the ASME Code Symbol, and National Board or USER stampings, a permit for a State Special must be applied for in writing by the Delaware user. Blueprints, design data, calculations and specifications shall be prepared by a Registered Professional Engineer, knowledgeable in the appropriate Code of Construction, and submitted to the Division of Boiler Safety prior to construction.

### **6.0 Installation**

6.1 A new boiler or pressure vessel installation, including a reinstalled or secondhand boiler or pressure vessel, shall be installed in accordance with:

6.1.1 The ASME Code.

6.1.2 Delaware Rules and Regulations.

6.1.3 ASME CSD1

6.1.3.1 Part CF of CSD-1 shall be met when the installing contractor submits an operational test form CSD-1 Appendix C or a form containing the same information. (Exhibits 1 & 2)

6.1.3.2 Part CM The preventive maintenance schedule will be determined by the owner or user.

6.1.4 The NBIC.

6.2 If a condition is not covered by these regulations, the applicable provisions of the ASME Code or NBIC govern.

6.3 External piping shall be made of materials accepted by the ASME Code.

6.4 It shall be the duty of the insurance company to notify the Division of installations on which insurance is accepted, refused, canceled, or suspended. Such reports shall give a detailed account of any unsafe conditions, and shall be submitted within 30 days of such insurance acceptance or refusal.

#### 6.5 Installation Registration

6.5.1 The installation of any boiler or pressure vessel within the scope of these rules, and installed in a place of public assembly, shall be registered with the Division by the installer before the operation of the boiler or pressure vessel. (Exhibit 4) The boiler may be operationally tested prior to obtaining a certificate.

#### 6.6 Clearances

6.6.1 All Boiler & Pressure Vessel installations shall have adequate clearance around the object so that inspections can be made, and service technicians may work safely. Adequate clearance shall be 30 inches minimum for boilers, and as specified by the manufacturer for pressure vessels. If adequate clearance is not available, a variance must be obtained from the Director of the Division of Boiler Safety.

#### 6.7 Power Boilers

##### 6.7.1 New Installations

6.7.1.1 Ladders and runways. Steel runway or platform, at least twentyfour (24") inches wide, and provided with standard handrails and toe boards on either side, with at least 7' 6" head room, shall be installed across the tops of adjacent boilers, or at some other convenient level, for the purpose of affording safe access to the boilers. All runways shall have at least two (2) means of exit, each exit to be remotely located from the other and connected to a permanent stairway or inclined ladder leading to the floor level.

6.7.1.2 Exit from boiler rooms all boiler rooms exceeding five hundred (500) square feet of floor area and containing one or more boilers having a fuel burning capacity of 1,000,000 BTU's shall have at least two (2) means of exit, one of which shall lead outside.

6.7.1.3 Explosion doors if used and if located in the setting walls, within seven (7) feet of the firing floor or operating platform, shall be provided with substantial deflectors to divert the blast.

6.8 When a standard boiler, pressure vessel, or nuclear component located within this jurisdiction is to be moved outside the jurisdiction for repair, alteration, or modification, it shall be documented on the appropriated "R" form. Copies of all "R" forms shall be forwarded to the Division. Routine Repairs are not required to be filed with the division.

6.9 The installation or operation of nonstandard boilers, pressure vessels, or nuclear components in this jurisdiction without prior permission from the Director is prohibited.

##### 6.10 Steam Boiler Blow Down Tanks and Receivers

6.10.1 Blowoff piping from a power boiler shall not discharge directly into a sewer or interconnected system. A blowoff tank shall be used where conditions do not provide adequate and safe open discharge and shall be placed between the boiler and the sewer or other such system.

##### 6.10.2 Pressure or unvented blowdown tanks:

6.10.2.1 A blowdown tank subject to possible maximum steam boiler pressure shall be constructed for the boiler pressure and stamped in accordance with the ASME Code.

6.10.3 Atmospheric or vented blowdown tanks:

6.10.3.1 The outlet from the blowdown tank shall be not less than twice the area of the boiler blowdown pipe, and made to extend internally to within six inches of the bottom of the tank.

6.10.3.2 A vent pipe at least twice the diameter of the inlet shall lead to the outside atmosphere. Vents shall be as direct as possible to the outside atmosphere and discharge at a point not less than seven feet above grade. No valve, water pocket, or other obstruction shall be in this line.

6.11 Construction of blowdown tanks

6.11.1 The minimum metal thickness of blowdown tanks, whether of the pressure or atmospheric type, shall be not less than fivesixteenths inch.

6.11.2 All blow down tanks, whether of the closed or vented type, shall have approved openings for cleaning and inspection, and shall be capable of a maximum discharge of 150 degrees Fahrenheit at five (5) PSIG.

6.12 Centrifugal type separators:

6.12.1 Centrifugal type separators shall be built and stamped in accordance with the ASME Code.

6.12.2 Separators may be used when a safe point of discharge is available and the pressure and temperature conditions at the point of discharge need not be considered.

6.12.3 Separators may be used as an auxiliary to a blowdown tank but may not be used in lieu of a conventional blowdown tank in those installations requiring a blowdown tank.

**7.0 Nonstandard Boilers or Pressure Vessels**

7.1 Nonstandard high-pressure boilers, which were installed in the State of Delaware prior to January 1, 1924, shall be subject to the rules of the ASME Boiler Code for calculations and installation. Nonstandard pressure vessels installed prior to June 30, 1974, shall be calculated and installed in accordance with ASME Code Section VIII, and the following rules:

7.1.1 Factors of Safety. The minimum factor of safety may not be less than 4 for existing installations. The factor of safety may be increased when it is considered necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and the particular service to which it is subject shall be the determining factors.

7.1.2 Any boilers or pressure vessels over 30 years old; the factor of safety shall be increased by not less than fivetenths; provided however that after a thorough internal and external yearly inspection the pressure allowed may be continued at its present factor of safety. The owner or user of such boiler or pressure vessel shall prepare the boiler for

hydrostatic pressure test by uncovering all riveted joints.

7.1.3 The owner/user and the AI shall agree what further NDE will be required to verify the integrity of the vessel.

7.1.4 When a nonstandard boiler, pressure vessel, or nuclear component is removed from this jurisdiction for reason other than repair or alteration, it shall not be brought back and installed within this State.

7.1.5 Maximum Allowable Working Pressure for Non-standard Pressure Vessels.

7.1.5.1 Internal Pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel is determined by:

7.1.5.1.1 The strength of the weakest course computed from the thickness of the plate.

7.1.5.1.2 The tensile strength of the plate.

7.1.5.1.3 The efficiency of the longitudinal joint.

7.1.5.1.4 The inside diameter of the course.

7.1.5.1.5 The factor of safety set by these rules.

$$\frac{\text{maximum allowable working pressure, psig} = TSt+E}{RFS}$$

Where:

TS  $\equiv$  Ultimate tensile strength of shell plate, PSI. When the tensile of shell plate is not known, it shall be taken as 55,000 PSI for temperatures not exceeding 700 F.

t  $\equiv$  Minimum thickness of shell plate of weakest course, inches.

E  $\equiv$  Efficiency of longitudinal joint depending upon construction. Use the following values: for riveted joints the calculated riveted efficiency; and for fusionwelded and brazed joints:

	<u>Percent</u>
<u>Single Lap Weld</u>	<u>40</u>
<u>Double Lap Weld</u>	<u>60</u>
<u>Single Butt Weld</u>	<u>60</u>
<u>Double Butt Weld</u>	<u>75</u>
<u>Forge Weld</u>	<u>70</u>
<u>Brazed Steel</u>	<u>80</u>

R  $\equiv$  Inside radius of weakest course of shell, inches, provided the thickness does not exceed 10 percent of the radius. If the thickness is over 10 percent of the radius, the outer radius

shall be used.

FS = Factor of safety allowed by these rules.

7.1.5.2 External Pressure: The maximum working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in the appropriate ASME Code Section VIII, Div. I, 2, or 3

7.1.6 A State Special number may be assigned to a boiler or pressure vessel of nonstandard design. All designs and specifications must be submitted to the Division for approval and must include:

7.1.6.1 Drawings and calculations certified by a mechanical engineer from the original manufacturer, or a Delaware registered professional engineer.

7.1.6.2 Material test reports certified by the original manufacturer or a material testing laboratory.

7.1.6.3 Report of a pressure test certified by the owner and a Delaware commissioned Inspector.

7.1.6.4 Report of an internal & external inspection by a Delaware commissioned Inspector.

7.1.6.5 Establish that welding meets the requirements of the ASME code.

7.1.6.6 If any of the above documentation has been lost, it will be necessary to fulfill the basic requirements by some other means acceptable to the Director.

## **8.0 Inspections**

### 8.1 Access for inspection.

8.1.1 The Secretary, Director, Deputy Inspector, Special Inspectors, or members of the Council on Boiler Safety, shall have full access during reasonable hours to any premises in the State, where a boiler, pressure vessel or nuclear component within the scope of these Rules and Regulations is being constructed, installed, connected for use or operated, to ascertain compliance with these Rules and Regulations. Immediate access must be provided upon event of an accident.

### 8.2 Inspection Requirements

8.2.1 High-pressure boilers, miniature boilers and high-pressure high temperature water boilers shall receive a certificate of inspection annually. They shall also be inspected internally annually. The external (in service) inspection should be done within six months of the internal inspection.

8.2.2 Low-pressure steam heating boilers, hot water heating boilers, hot water supply boilers, and lined water heaters, shall be given a certificate of inspection biennially. This inspection may be an external inspection,

unless the Inspector requires an internal inspection. The Inspector, due to operating conditions, may require additional inspections.

8.2.3 All pressure vessels shall be given a certificate of inspection every four years. This inspection may be an external inspection, unless the Inspector requires an internal inspection. The Inspector, due to operating conditions such as corrosive conditions or lethal service, may require additional inspections.

### 8.3 Certificate Inspections

8.3.1 Certificate inspections will be allowed a grace period of one month beyond the normal inspection date, with extensions to the above, granted only by the Director. A current Certificate of Inspection must have a decal attached by the Inspector using the decals provided by the Division. Violation of this paragraph will subject the owner/user to the penalty, as provided in 29 Del.C. §8210

8.3.2 If, at the discretion of the Inspector, a hydrostatic test or any other test is deemed necessary, it shall be made by the owner or user of the boiler or pressure vessel.

8.3.3 Sufficient covering of the boiler or pressure vessel shall be removed to satisfy the Inspector that he may determine the conditions of the boiler or pressure vessel. If the covering cannot be removed at that time, the inspector may order the operation of the boiler or pressure vessel stopped until such time as the covering can be removed and proper examinations made.

8.3.4 Installing contractor may perform operational tests on boilers prior to obtaining an operating certificate. This is for operational testing only.

### 8.4 Alternate Internal Inspection Requirements

8.4.1 High-pressure boiler internal inspection may be extended to 24 months; and 48 months for waste heat boilers, if the following requirements are met:

8.4.1.1 Continuous water treating under the general supervision of a trained person with experience in water treatment for the purpose of controlling and limiting corrosion and deposits.

8.4.1.2 Record keeping available for review showing:

8.4.1.2.1 The date and time boiler is out of service and the reason therefore.

8.4.1.2.2 Daily analysis of water samples that will adequately show the condition of such water and any elements or characteristics which are capable of producing corrosion or other deterioration of the boiler or its parts.

8.4.1.3 Annual external inspections performed by an Inspector with review of records in 8.4.1.1 and 8.4.1.2 above.

8.4.1.4 Applicable NDE, if required by the Inspector. Records are to be maintained at least six (6) years. In order to qualify for such an extension, a written request to the Director must be made. This extension, when granted, is good until revoked.

8.4.2 The Director upon written requests may grant other extensions from the owner user with approval of the AIA.

#### 8.5 Condemned boiler or pressure vessel

8.5.1 This is a vessel that is declared unsafe by an Inspector, due to an irreversible defect, and removed from service. It shall be stamped as follows:

8.5.1.1 XXXDELXXX - adjacent to original stamping

8.6 The inspections required by this Section shall be made by the Director, by a Deputy Inspector, an Owner/User inspector, or by a Special Inspector.

8.6.1 If an owner or user of equipment, specified by this Section, obtains an insurance policy on such equipment from an insurance company licensed by the Delaware Insurance Commissioner's Office to insure boilers and pressure vessels, the Special Inspector employed by that insurance company shall conduct the inspection required by this Section.

8.6.2 An Inspector employed by an OwnerUser may conduct the inspections on pressure vessels owned by that company in lieu of a State or Insurance Company Inspector.

### **9.0 Certificate of Inspection**

#### 9.1 Issuance of Certificate

9.1.1 If upon making the required inspection, the Inspector finds the boiler, pressure vessel or nuclear installation to be in a safe working order, including all necessary safety devices shall submit a report to the Division of Boiler Safety. The Division of Boiler Safety, either electronically or upon receipt of the inspection report (hard copy) from said Inspector, and the fee mentioned hereafter paid, shall issue a Certificate of Inspection. The certificate shall be posted on or near the object.

9.1.2 At the time of the first inspection, the Inspector shall leave a decal at the site. The second part of the decal is to be affixed to the lower right hand corner of report, and sent to the Division.

9.1.3 On subsequent inspections, the Inspector will attach the decal to the Certificate of Inspection, and likewise affix the second portion of the decal to the lower right hand corner of the inspectors request form. Any corrections or changes to this inspector's request form will be circled and changes noted and returned to the Division. If reports are

submitted electronically, no decals or hard copies of report have to be submitted to the Division.

9.1.4 In the event of a violation or unsafe condition, the Inspector will affix to the Certificate a red "fail" sticker. He will note on his Inspector's request, a written explanation and will attach a signed decal marked "fail", and return the inspection request to the Division. No decal or hard copy of report is required if report is submitted electronically.

9.2 Certificates for boilers, pressure vessels or nuclear installations

9.2.1 Every Inspector inspecting boilers, pressure vessels or nuclear installations in the State of Delaware shall file with the Director the applicable inspection report within thirty (30) days, after the date of inspection.

#### 9.3 Certificate withdrawn, withheld, or revoked.

9.3.1 If an Inspector finds that the boiler, pressure vessel or nuclear installation is not in safe working condition, or is not provided with the necessary safety appurtenances, or if the appurtenances are improperly arranged, he shall immediately notify the owner or user, and the person in charge of the boiler, of the code violations. He shall report the same to the Director, who shall place or cause to be placed on it an official State seal to prevent use of said boiler, pressure vessel or nuclear installation and its appurtenances, until it is put in condition to insure safety of operation. The owner and/or user shall not operate it or permit it to be operated, until such Certificate has been granted or restored.

### **10.0 Safety and Relief Valves and Rupture disks.**

10.1 Installation of pressure relief valves, safety valves and rupture disks shall be in accordance with the NBIC and the appropriate Section of the ASME Code. A hot water supply boiler, including lined water heaters stamped HLW shall have a pressure temperature relief valve marked 210F.

10.2 When any of the safety/relief valves require repairs or adjustments, these adjustments must be made by the manufacturer or an appropriate "VR" stamp repair company, and tested either before reinstallation or immediately upon placing the boiler, pressure vessel or nuclear installation in service.

10.3 No person shall load or adjust safety/relief valves in any matter to maintain a working pressure in excess of that stated on the certificate of inspection.

10.4 The owner/user shall assure that the safety valve(s) is functional at all times.

10.5 All low-pressure boiler safety and relief valves shall be tested by hand or bench tested at the time of inspection.

10.6 All high pressure boiler safety valves shall be hand tested or bench tested for set pressure and blowdown at the time of inspection or within the maximum allowable inspection interval provided by these regulations. In lieu of bench testing, the hydraulic lift system is acceptable. All high-pressure boiler safety valves for pressures over 400 PSIG shall be overhauled every five(5) years.

10.7 All pressure vessel relief valves shall be hand tested or bench tested for set pressure at the time of inspection or within the allowable inspection interval permitted by these regulations. In lieu of bench testing, the hydraulic lift system is acceptable. The frequency may be extended when supported by performance records of the individual user. For liquids or gasses, which are hazardous or costly and inservice testing is impractical, bench testing/replacement frequency shall be left to the owner/user.

10.8 Bench testing is only acceptable if the bench testing apparatus can deliver proper pressure and volume. Sufficient volume should be enough to lift the pressure relief valve fully open.

10.9 Pressure vessel relief valves on installations must be overhauled or replaced every four (4) years where there is documented corrosion, deterioration of valve parts, product build up, or the possibility of plugging in the inlet or outlet, or sticking of the disc to the seat.

### **11.0 Antique Boilers**

11.1 Antique boilers include any closed vessel manufactured prior to January 1, 1924, and used solely for display and demonstration purposes, in which water is heated or steam is generated by the direct application of heat from the combustion of fuels.

11.1.1 An AI shall inspect antique boilers and remaining material thickness will be determined by a method acceptable to the AI. The MAWP based on these Rules and Regulations, as determined by a Registered Professional Engineer knowledgeable in power boiler fabrication, shall be submitted to the Director for his review and acceptance.

11.1.2 All antique boilers shall be inspected annually by an AI and shall include the following:

11.1.2.1 A hydrostatic test at 1 1/4 times the MAWP

11.1.2.2 ASME approved fusible plug installed and in good condition. Fusible plug shall be removed annually to check condition. .

11.1.2.3 A safety valve meeting current ASME and National Board requirements set at or below the MAWP, with required relieving capacity, and tested, as required by these regulations. The seals on the valve shall be intact. Outlet of safety valve shall be piped to a safe point of

discharge.

11.1.2.4 A visual examination for any evidence of corrosion or leakage to include the boiler piping up to the first valve.

11.1.2.5 Thickness readings shall be taken at the time of the first inspection, and every two years thereafter to determine the amount of corrosion of metal.

11.1.2.6 Any other requirements specified in the Division regulations.

11.1.3 Approval for operation of an antique boiler will be granted upon successful completion of the above inspection requirements and payment of the fee required. A Certificate will be issued and shall be valid for a period not to exceed 12 months. A fee of \$15.00 shall be charged for inspections and a fee of \$15.00 shall be charged for the certificate. A current operating certificate shall be posted while in operation.

11.1.4 Alternate approval may be given to operate an antique boiler having a valid certificate from another State, whose requirements have been determined by the Division to meet or exceed these requirements.

11.1.5 Request for approval must be submitted 30 days before operation.

### **12.0 Repairs or Alterations by Fusion Welding**

12.1 Repairs and alterations to boilers and pressure vessel shall comply with:

12.1.1 The original construction standard, or later editions of the construction standard.

12.1.2 The latest accepted edition of the National Board Inspection Code, and

12.1.3 These Rules & Regulations.

12.2 All repairs or alterations to boilers, pressure vessels or piping within jurisdictional limits, shall be approved by a Delaware commissioned AI and performed under his guidance.

12.3 The organization making the repair or alteration shall possess a valid National Board Repair Certificate of Authorization

12.3.1 National Board Repair Certificate of Authorization is required for any repair work performed in or out of the manufacturer's premises.

12.3.2 Design changes shall be certified by an organization having an approved O.C. Program, which includes control of drawings, design calculations and specifications. These controls shall meet or exceed ASME requirements.

12.3.3 The work shall be within the scope of their O.C. program.

12.4 An R1 "Record of Welded Repair" shall be filed

with the Division of Boiler Safety with the Delaware jurisdiction number clearly identified.

12.5 An R2 "Report of Alteration" with a copy of the manufacturer's data report shall be filed with the Division, with the Delaware jurisdiction number clearly identified.

12.6 Repairs of a routine nature as defined by the NBIC need not have a "Report of Welded Repair" submitted to the Director, but this repair documentation must be retained by the owner/user as long as the object remains in service. "Routine Repair" shall be entered in "Remarks" section of the R-1 Form.

#### 12.7 Lap Seam Cracks

12.7.1 The shell or drum of a boiler or pressure vessel in which a lap seam crack is discovered along a longitudinal riveted joint shall be immediately condemned and permanently removed from service. Repairs of this type defect are prohibited.

#### 12.8 Riveted Patches

12.8.1 In applying riveted patches, the design of the patch and method of installation shall be in accordance with the NBIC, 1973 edition.

12.9 Repair, modification or replacement of nuclear components

12.9.1 Repair, modification or replacement of nuclear components shall be made only by an organization which holds a valid Certificate of Authorization for use of the National Board nuclear "NR" symbol stamp. Repair, modification or replacement of ASME stamped "NV" pressure relief valves shall be made only by an organization which holds valid National Board Certificates of Authorization for use of the "NR" and "VR" symbol stamps.

12.10 Restamping of Boilers and Pressure Vessels shall be in accordance with the NBIC.

### **13.0 Fees**

#### 13.1 Inspection and certificate of inspection fees:

13.1.1 The owner and/or user of a boiler, pressure vessel or nuclear installation required to be inspected under these Rules & Regulations shall pay the required fees.

13.1.2 All checks should be made payable to the Division of Boiler Safety and sent directly to the office by the owner and/or user.

#### 13.2 Certificate of Inspection Fees:

13.2.1 Boiler and pressure vessel certificate fees are \$7.50 annually.

#### 13.3 Inspection Fees:

13.3.1 Power Boilers & High Pressure/High Temperature Hot Water Boilers:

13.3.1.1 Internal inspection under 5 HP \$15.00  
5 HP up to 99 HP \_\_\_\_\_ \$25.00

99 HP up to 200 HP \_\_\_\_\_ \$35.00

Over 200 HP, on an hourly basis with a minimum of \_\_\_\_\_ \$50.00

13.3.1.2 External Inspection \_\_\_\_\_ \$15.00

#### 13.3.2 Heating Boilers and Hot Water Supply

Boilers:

13.3.2.1 Without a manhole \_\_\_\_\_ \$15.00

13.3.2.2 With a manhole \_\_\_\_\_ \$25.00

13.3.3 Water heater \_\_\_\_\_ \$10.00

#### 13.3.4 Pressure Vessels

13.3.4.1 The required inspection fee shall be based on the crosssectional area in square feet obtained by multiplying the square of the external diameter of the vessel in feet by .7854. For rectangular vessels, the product of the two greatest external dimensions in feet i.e., length by either width or depth, whichever is greater. For jacketed vessels, the product of the greatest external diameter in feet or width of outside shell and the greatest length or depth in feet of the outside shell.

Fifty (50) square feet or less \_\_\_\_\_ \$10.00

Each additional 100 square feet or fraction thereof in excess of 50 square feet \_\_\_\_\_ \$20.00

13.3.4.2 A group of pressure vessels such as rolls of a paper machine or a dryer operating as a single machine or unit shall be considered as one pressure vessel and the inspection fee shall be based on the actual hourly inspection time.

#### 13.3.5 Hydrostatic tests

13.3.5.1 When it is necessary to make a special trip to witness the application of a hydrostatic test, the fee for such service shall be based on the actual hourly inspection time including travel. The entire expense of applying the hydrostatic test shall be borne by the owner and/or user.

#### 13.3.6 Nuclear Installations

13.3.6.1 The inspection fee is based on actual hourly inspection time at an hourly or daily rate determined by the Director of the Division of Boiler Safety, dependent on the type of qualified personnel necessary to perform the required safety inspections.

#### 13.3.7 Shop Reviews

13.3.7.1 A fee of \$1500 per review, requires a team leader and if available, team member to be present. A fee of \$800 per review, if only National Board authorization to repair or alter ASME stamped boilers and pressure vessels is requested.

#### 13.4 Miscellaneous Fees:

##### 13.4.1 Inspectors Commission Fees

###### 13.4.1.1 National Board Examination

\$75.00, for Delaware resident; \$150, non-

Delaware resident.

13.4.1.2 Examination for a Delaware Inspector Commission \$50

13.4.1.3 Biennial (2 yr.) Commission Credential card renewal \$25

13.4.1.4 Replacement of lost or destroyed Commission \$20

13.4.2 Permit for State Special

13.4.2.1 Boiler or Pressure Vessel \$500 minimum

13.4.2.2 Nuclear installation \$2000 minimum

#### **14.0 Gas Water Heaters Suitable For Potable Water And Space Heating**

##### 14.1 Units Covered

14.1.1 Gas water heaters, which are suitable for potable water and space heating, shall be covered by this Section provided the water heater does not exceed any of the following limitations:

14.1.1.1 Maximum heat input of 200,000 BTU per hour or 58,600 watts;

14.1.1.2 Maximum water temperature limit of 210 degrees Fahrenheit (99 degrees Celsius); or

14.1.1.3 Nominal water containing capacity of 120 gallons (454.2 L).

14.1.2 This Section shall cover the water heater, heat exchanger, coil or any other device connected directly or indirectly to the water heater and used to supply potable hot water and space heating.

14.2 Gas Water Heaters Suitable for Potable Water and Space Heating with Input Ratings of 75,000 BTU per Hour or less

14.2.1 In addition to the requirements in Subsection A of this Section, gas water heaters suitable for potable water and space heating with input ratings of 75,000 BTU per hour or less shall also be constructed and installed in accordance with the American National Standard for Gas Water Heaters, Volume 1, ANSI Z21.10.1, current edition and addenda, including, but not limited to Z21.10.1a, current edition and addenda, as well as all applicable Federal, State and local laws and regulations. Water heaters covered by this Section are not required to be constructed to the standards set forth in Section IV, ASME Boiler and Pressure Vessel Code, except to the extent required by ANSI Z21.10.1, current edition and addenda.

14.3 Gas Water Heaters Suitable for Potable Water and Space Heating with Input Ratings in excess of 75,000 BTU per Hour but with a Maximum of 200,000 BTU per Hour

14.3.1 In addition to the requirements of 14.1 of this Section, gas water heaters suitable for potable water and

space heating, with input ratings in excess of 75,000 BTU per hour, but not more than 200,000 BTU per hour, shall be constructed and installed in accordance with the American National Standard for Gas Water Heaters, Volume III, ANSI Z21.10.3, current edition and addenda, as well as applicable Federal, State and local laws and regulations.

##### 14.4 Limitations

14.4.1 All units covered by this Section shall not be connected to any existing nonpotable water heating system.

14.4.2 No more than one (1) unit covered by this Section shall be connected to a circulating system.

14.4.3 This Section shall not apply to closed loop systems.

##### 14.5 Inspection

14.5.1 Exemption from field inspection of units covered by this Section shall be governed by 29 Del.C. §8210.

14.5.2 These exempt water heaters shall be equipped with ASME Code approved pressure/temperature relief valves.

14.6 Oil fired combination service water heating or space-heating equipment shall meet the requirements of the ASHRAE/IES 90.1, current edition and addenda.

#### **15.0 Variances**

15.1 The Director of the Division of Boiler Safety shall have the authority to grant a variance, on a case by case basis, to those rules and regulations that pertain to the installation of new boilers to replace existing boilers. The variance shall be in writing describing all pertinent information regarding the variance requested and the reason for the request.

#### **16.0 Complaints**

16.1 When the division receives a complaint a boiler or pressure vessel is being operated in an unsafe condition or does not meet codes, an investigation shall be conducted by either a State Deputy Boiler Inspector, or by the inspector employed by the insurance company carrying boiler machinery insurance on the object. A report will be submitted to the Director of Boiler Safety, and appropriate action will be taken depending on the conditions found.

#### **17.0 Severability**

17.1 If any part of these Rules and Regulations are held invalid, unconstitutional, or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.

**DEPARTMENT OF  
TRANSPORTATION****DIVISION OF PLANNING AND POLICY**

Statutory Authority: 17 Delaware Code,  
Section 190, et seq. (17 Del.C. 190, et seq.)

**State Scenic and Historic Highways Program****Background**

The Delaware Department of Transportation through its Division of Planning and Policy is seeking to develop a State Scenic and Historic Highways Program and has completed a draft Program Guide.

The Federal Highway Administration has a national scenic byways program and Delaware is one of the few states that does not have a companion state level program. During the 2000 legislative session, the General Assembly passed Senate Bill 320 authorizing the Department to develop the State Scenic and Historic Highways Program. The Department will use this program to support county and local government and other agencies and organizations wishing to protect the scenic, historic, natural, and/or archeological resources of statewide or national significance to the extent that a person traveling along the roadway can experience them. This objective will be met through the development of corridor plans that outline the development regulations and transportation program changes needed to preserve the features of a particular roadway.

The draft Program Guide establishes the Program and its guidelines. It provides an understanding of the vision for Delaware's Scenic and Historic Highway Program, and an overview of the designation process, including how you can nominate a roadway. It also provides information on identifying intrinsic qualities (scenic, historic, natural, cultural, recreational, and archeological), preparing corridor plans, and seeking sources of support in implementing these plans.

**Public Comment Period**

As part of the public comment period, the Department is holding three public hearings at the following locations and on the following dates:

**Sussex County:**

Monday, September 17, 2001

DeIDOT South District Office in Georgetown.

The South District Office is located on Route 113.

**Kent County:**

Tuesday, September 18, 2001

Administration Building in Dover.

The DeIDOT Administration Building is located on

Route 13, across the street from the Blue Hen Corporate Center. If traveling by Route 1, take Exit 95 and bear right off of the exit ramp, the building will be on your left.

New Castle County:

Thursday, September 20, 2001

DeIDOT North District Office in Bear.

The DeIDOT North District Office is located on Route 7.

At each of the public hearings Department staff will be available between 4:00 p.m. and 7:00 p.m. to provide information on the Program and draft Program Guide and answer questions. At 6 p.m. Department staff will provide a presentation, that includes an overview of the Program and Program Guide, followed by an opportunity for the public to offer comments and ask questions. IN addition, the Department will be accepting comments on the draft Scenic and Historic Highways Program through September 30, 2001. Comments, as well as any questions or requests for additional information should be directed to:

Joseph Cantalupo, Assistant Director

Division of Planning and Policy

The Delaware Department of Transportation

PO Box 778

Dover, DE 19903

(302) 760-2121 (telephone), (302) 739-2251 (fax)

**Program Guide****Delaware Scenic & Historic Highways****Introduction**

Delaware is rich in scenic, historic and cultural resources. The first state to ratify the U.S. Constitution, Delaware's landscapes and communities tell stories from battles between warring colonial powers, to the rise of a mercantile economy among the mills of the Brandywine River, to the continuing importance of agriculture to the state, to the evolution of American recreational pastimes along the state's beckoning beaches.

These diverse resources and their stories are accessible to travelers and residents along road corridors that deserve special consideration of their unique features and special role in the highway system. To recognize Delaware's special road corridors, the General Assembly in 2000 created a Scenic and Historic Highway Program (17 Del.C. c. 1 §101).

This program guide provides an understanding of the vision for Delaware's Scenic and Historic Highway Program, and an overview of the designation process, including how you can nominate a roadway. It also provides information on identifying intrinsic qualities (scenic, historic, natural, cultural, recreational, and archeological), preparing corridor plans and seeking sources of support in implementing these plans.

## **What is a Scenic and Historic Highway?**

A Scenic and Historic Highway is a transportation route which is adjacent to or travels through an area that has particular intrinsic scenic, historic, natural, cultural, recreational or archeological qualities. It is a road corridor that offers an alternative travel route to our major highways, while telling a story about Delaware's heritage, recreational activities or beauty. It is a route that is managed in order to protect its special intrinsic qualities and to encourage appreciation and/or development of tourism and recreational resources. Scenic and Historic Highways can also be called "scenic byways."

## **Why would you want to seek this designation for a roadway?**

Scenic and Historic Highway designation provides official recognition of the special nature of a roadway corridor. This designation will heighten awareness and recognition of the community seeking the designation and help to boost community pride.

Additional community benefits *may* include:

- Increased business, tax revenue, and jobs from tourist dollars.
- Federal and state funding for planning and implementing a corridor plan.
- Protection for a resource that may become threatened.
- Improved maintenance for your road.
- Access to resources and expert assistance in managing the corridor.
- Identification on state highway maps, leading to more tourism opportunities for the area.
- Assistance from state offices of economic development and tourism.

## **Relationship to personal property rights**

When a roadway is designated as a Delaware Scenic and Historic Highway, a Corridor Plan must be developed, which includes a process for involving property owners in a collaborative discussion of future plans for the highway corridor. The preparation of the Corridor Plan provides a means to consider the interests of all affected parties. Designating a roadway corridor as Scenic and Historic does not mean property owners will be told what to do with their property.

## **Program governance**

Delaware's Scenic and Historic Highways Program is a collaborative effort of Delaware's citizens, local, state and federal government. During the 2000 legislative session, the General Assembly passed Senate Bill 320 authorizing the Delaware Department of Transportation (DelDOT) to develop the Delaware Scenic and Historic Highways

Program. Senate Bill 320 required that the program be developed under the guidance of the State Scenic and Historic Highways Advisory Board and it required that the Board be comprised of a wide range of interests. Members of the Board include representatives of county government, other state agencies, the outdoor advertising industry, the real estate industry and various environmental and historic preservation advocacy groups.

The State Scenic and Historic Highways Advisory Board assists and recommends in the designation, development, operation, management and promotion of scenic and historic highways. The program is managed by DelDOT. The Secretary of Transportation designates Delaware Scenic and Historic Highways based upon criteria outlined in this program guide and upon the recommendations of the State Scenic and Historic Highways Advisory Board.

DelDOT is responsible for an annual evaluation of the Scenic and Historic Highways Program that identifies changes needed to keep the Program current with the state of the practice. The annual evaluation also tracks the progress of sponsors of designated Scenic and Historic Highways in implementing corridor plans to support, preserve and manage the special qualities of their corridor. DelDOT provides an annual report to the Governor and General Assembly on the overall status of the Program and the individual highways designated under it.

## **National Scenic Byways Program**

Delaware's Scenic and Historic Highways Program has been spurred by the creation and policies of the National Scenic Byways Program, first established in 1991 by the federal Intermodal Surface Transportation Efficiency Act (ISTEA). This program, managed by the U.S. Department of Transportation in partnership with state departments of transportation or other responsible state agencies, designates National Scenic Byways and All-American Roads based on their scenic, historic, recreational, cultural, natural and/or archeological intrinsic qualities.

Through 2000, 66 National Scenic Byways and 15 All-American Roads have been designated. Federal funds may be available to assist sponsors of state scenic byways. These funds may be used to prepare corridor management plans, to seek National Scenic Byway designation, or for other purposes including executing interpretive plans, preparing marketing materials, or addressing safety improvements needed due to scenic byway designation.

## **Program vision, goals and objectives**

Looking into the future, the State Scenic and Historic Highways Advisory Board discussed their vision for the Program, its accomplishments and contributions to the citizens of Delaware. They outlined the Vision, Goals and Objectives for the program as follows:

*The Delaware State Scenic and Historic Highways Program showcases the natural beauty and unique features of the state and fosters the preservation of natural, cultural and historic resources, while benefiting economic development through tourism and recreational opportunities.*

*Sites and features of the State Scenic and Historic Highways are apparent to all who travel Delaware roads, and the Program enjoys broad public participation and support.*

### **Vision**

The Delaware State Scenic and Historic Highways Program showcases the natural beauty and unique features of the state and fosters the preservation of natural, cultural and historic resources, while benefiting economic development through tourism and recreational opportunities.

Sites and features of the State Scenic and Historic Highways are apparent to all who travel Delaware roads, and the Program enjoys broad public participation and support.

### **Goal 1 - Evaluate and Designate State Scenic and Historic Highways.**

Determine the responsibilities of sponsors seeking to designate a corridor under the State Scenic and Historic Highways Program.

Determine the responsibilities of the State Department of Transportation in administering the State Scenic and Historic Highways Program.

Determine the responsibilities of the Scenic and Historic Highways Advisory Board in administering the State Scenic and Historic Highways Program.

Define the opportunities, benefits, and impacts of designation under the State Scenic and Historic Highways Program.

Assure compliance with FHWA requirements regarding outdoor advertising control.

Ensure to the extent possible that all scenic and historic highway designations are continuous.

Evaluate opportunities for multi-state scenic byway development.

### **Goal 2 - Protect and/or enhance State Scenic and Historic Highways and their resources through a coordinated management program while ensuring the safe operation of these routes.**

Coordinate with other related federal, state, local and private sector programs and planning processes.

Determine the responsibility of local government in the management of designated State Scenic and Historic Highways.

Assist State Scenic and Historic Highway sponsors in locating and applying for federal, state and private funding available to support such highways.

Ensure adherence to Federal Scenic Byways Program requirements to afford the best opportunity for federal funding and designation where desired.

Protect the historic and scenic character of the highway while addressing the need for safe and efficient traffic flow.

Promote the use of Context Sensitive Design criteria and traffic calming measures.

Encourage multi-modal systems wherever feasible - auto, transit, pedestrian, and bicycle.

Address the needs of commerce in corridor management plans.

Support full range of public and private landscape conservation and historic preservation programs to afford resource protection to the intrinsic qualities of designated scenic highways.

Advocate for legislation to enhance funding opportunities for the intrinsic resources of designated scenic highways.

### **Goal 3 - Benefit economic development through tourism and promote byway related educational and recreational opportunities.**

Promote tourism opportunities associated with State Scenic and Historic Highways.

Develop marketing programs to highlight State Scenic and Historic Highways.

Improve access to areas utilized for the purposes of recreation where appropriate while protecting the intrinsic qualities of the designated scenic highway and the recreation area.

Develop a unique identity for the State Scenic and Historic Highways Program.

Develop a creative range of interpretive materials on the State Scenic and Historic Highways Program and the corridors designated within it such as maps, brochures, a website, and wayside exhibits, among other ideas.

Coordinate with the Delaware Historic Markers Program and other educational programs with related purposes to the Scenic and Historic Highways Program.

### **Goal 4 - Monitor and evaluate the implementation of the State Scenic and Historic Highways Program to ensure it continues to meet the needs of the State and its citizens.**

Develop an annual evaluation program that will:

Identify changes needed to keep the Program current with the state of the practice;

Track the progress of individual corridor management plans as well as conformance with the provisions of the Program; and

Provide an annual report to the Governor and General Assembly on the overall status of the Program and the individual highways designated under it.

### **Chapter 1: Overview of Designation Process**

**Step 1 – Nomination Application**

The successful completion, review and evaluation of a Step 1 – Nomination Application results in the designation of a road by Delaware's Secretary of Transportation as a State Scenic and Historic Highway. The application can be submitted by anyone interested in seeking designation for a route as a Delaware Scenic and Historic Highway. The review process for the nomination focuses on an evaluation of the identified intrinsic qualities of the highway and on the input from a public involvement process carried out as part of preparing the Nomination Application.

Impact of state designation as a scenic and historic highway

Two principal impacts result from the designation of a route as a Delaware Scenic and Historic Highway. First, the sponsor for the route is eligible to apply through DeIDOT to the Federal Highway Administration for grant funds to assist with the completion of a Corridor Plan for the Scenic and Historic Highway and/or may use the state designation status to assist in seeking funding from other sources to assist with the Corridor Plan.

Second, the designation affects permits for new off site/off premises signs (outdoor advertising signs that are placed on one property, but advertise goods or services available on another property) on any roads controlled by the Highway Beautification Act of 1965. New off premise outdoor advertising signs are not permitted along state Scenic and Historic Highways. This rule does not affect existing outdoor advertising signs.

**Step 2 – Corridor Plan Application**

The successful completion, review and evaluation of a Step 2 – Corridor Plan Application results in approval of the Corridor Plan by Delaware's Secretary of Transportation, and then signing (with specially designed signs) of the Delaware Scenic and Historic Highway, identifying it on state maps and promoting it through the Delaware Tourism Office.

A Corridor Plan is a written document in which the highway sponsor describes the goals, strategies, and responsibilities for conserving and enhancing a scenic and historic highway's most valuable qualities. It is developed collaboratively with all those who have an interest in the future of the area included in the Scenic and Historic Highway corridor. It includes both a long-term Vision for what the Scenic and Historic Highway may become over time and also a short-term Action Plan that covers the initial two years of implementation of the Corridor Plan.

**Impact of approval of the Corridor Plan for a Delaware Scenic and Historic Highway**

The impact of approval of the Corridor Plan for a Delaware Scenic and Historic Highway is stated above. DeIDOT will provide signs for the route to indicate its

designated status and will identify the route on state maps. The Delaware Tourism Office will promote the Scenic and Historic Highway in accord with the promotion and marketing plans included in the Corridor Plan.

**Chapter 2: Step 1 – Nomination Application****Who can nominate a route to become a Delaware Scenic and Historic Highway?**

Any interested party can nominate a route, including individuals; local governments; counties; tourism departments; historical societies; non-profit organizations; state and federal agencies; or a Corridor Advocacy Group formed of citizens, groups or local governments. The party nominating a route is called the sponsor.

**What information is required for the nomination?**

DeIDOT has prepared a nomination form to guide the sponsor in preparing the Step 1 – Nomination Application. The sponsor needs to provide the following information about the proposed Scenic and Historic Highway:

- A physical description of the route.
- Representative photographs.
- A map indicating the boundaries of the route that locates the intrinsic qualities along the corridor, and indicates land uses in the corridor.
- An intrinsic quality resource inventory.
- A written statement that summarizes and evaluates the significance of the primary intrinsic quality for which the highway merits designation and that also describes the significance of any secondary intrinsic qualities present along the route.
- A written description of what a traveler will see when traversing the corridor.
- A description of public involvement conducted to date and the comments and input that have resulted from this process.

**Who reviews the nomination and what is the review process?**

DeIDOT's Scenic and Historic Highways Coordinator reviews the nomination application with representatives from the State Historic Preservation Office, Department of Natural Resources and Environmental Control, Delaware Tourism Office, and Department of Agriculture. This Evaluation Committee jointly makes a recommendation to DeIDOT's Director of Planning. If the Evaluation Committee's recommendation is that the Nomination is not complete or should not be approved, DeIDOT's Director of Planning will return the nomination application to the sponsor with a letter that specifies reasons for the disapproval and includes recommendations for how the

application could be resubmitted, if appropriate.

If the Evaluation Committee's joint recommendation to the Director of Planning is favorable, the Director of Planning reviews the application and submits it with the Evaluation Committee's recommendation and with his or her recommendation to the State Scenic and Historic Highways Advisory Board for review. If the Advisory Board recommends approval, the application is submitted to the Secretary of Transportation for review and a final decision.

### **What is the timeline for the review of Step 1 – Nomination Applications?**

There will be ongoing reviews of Step 1 – Nomination Applications by the Evaluation Committee and by the Advisory Board. As a guideline, DeLDOT will issue a response to the applicant within 120 days from the time that a complete Step 1 – Nomination Application is received.

### **Who designates a roadway as a Delaware Scenic and Historic Highway?**

Designation is made by Delaware's Secretary of Transportation based on submission of the Step 1 – Nomination Application, joint review by the Evaluation Committee of state agency representatives, review by DeLDOT's Director of Planning and then review and recommendation for approval by the State Scenic and Historic Highways Advisory Board.

### **What is the effect of designation as a Delaware Scenic and Historic Highway?**

As stated in the preceding section, two principal impacts result from the designation of a route as a Delaware Scenic and Historic Highway. First, the sponsor for the route is eligible to apply through the Delaware Department of Transportation to the Federal Highway Administration for grant funds to assist with the completion of a Corridor Plan for the Scenic and Historic Highway and/or may use the state designation status to assist in seeking funding from other sources to assist with the Corridor Plan.

Secondly, the designation affects permits for new outdoor advertising signs that are placed on one property but advertise goods or services available on another property. New outdoor advertising signs are not permitted along state Scenic and Historic Highways. This rule does not affect existing billboard signs.

Other benefits of designation as a Delaware Scenic and Historic Highway follow once the Corridor Plan that is described in the next chapter is approved.

### **What are the designation criteria for Step 1 – Nomination Application?**

The primary criteria include consideration of the quality of the road's intrinsic scenic, historic, natural, cultural, recreational or archeological resources. The Sponsor should

identify and provide documentation of the primary intrinsic quality for which they think the road merits designation as a Delaware Scenic and Historic Highway. The application should include a statement of significance for these resources to justify why the route merits designation.

While the route can qualify as a Delaware Scenic and Historic Highway based on the significance of just one intrinsic quality, applicants should also describe any secondary intrinsic qualities present along the route and provide a statement describing the significance of the resources.

Additional criteria include:

A requirement that the route proposed for designation must be continuous in order to encourage management of the entire route to protect its special intrinsic qualities and to support the best possible visitor experience along the route.

- Information to demonstrate a high level of public involvement and public support.
- The route must be a public route that safely accommodates two-wheel drive motor vehicles.

### **Information about intrinsic qualities: definitions**

**Scenic Quality** is the heightened visual experience derived from the view of natural and man-made elements of the visual environment of the scenic and historic highway corridor. The characteristics of the landscape are strikingly distinct and offer a pleasing and most memorable visual experience. All elements of the landscape – landform, water, vegetation, and man-made development – contribute to the quality of the corridor's visual environment. Everything present is in harmony and shares in the intrinsic qualities.

**Historic Quality** encompasses legacies of the past that are distinctly associated with physical elements of the landscape, whether natural or man-made, that are of such historic significance that they educate the viewer and stir an appreciation for the past. The historic elements reflect the actions of people and may include buildings, settlement patterns, and other examples of human activity. Historic features can be inventoried, mapped, and interpreted. Historic features must possess integrity of location, design, setting, material, workmanship, feeling, and association.

**Natural Quality** applies to those features of the visual environment that are in a relatively undisturbed state. These features predate the arrival of human populations and may include geological formations, fossils, landforms, water bodies, vegetation, and wildlife. There may be evidence of human activity, but the natural features reveal minimal disturbances.

**Cultural Quality** is evidence and expression of the customs or traditions of a distinct group of people. Cultural features include, but are not limited to, crafts, music, dance, rituals, festivals, speech, food, special events, vernacular

architecture, etc. that are currently being practiced. The cultural qualities of the corridor could highlight one or more significant communities and/or ethnic traditions.

**Recreational Quality** involves outdoor recreational activities directly associated with and dependent upon the natural and cultural elements of the corridor's landscape. The recreational activities provide opportunities for active and passive recreational experiences including, but not limited to, rafting, boating, fishing and hiking. Driving the road itself may qualify as a pleasurable recreational experience. The recreational activities may be seasonal, but the quality and importance of the recreational activities as seasonal operations must be well recognized.

**Archeological Quality** involves those characteristics of the scenic and historic highway corridor that provide physical evidence of historic or prehistoric human life or activity that is visible and capable of being inventoried and interpreted. The corridor's archeological interest, as identified through ruins, artifacts, structural remains, and other physical evidence, has scientific significance that educates the viewer and stirs an appreciation for the past.

### **How to inventory and evaluate your Corridor's intrinsic qualities**

In 1999, the Federal Highway Administration (FHWA) published a booklet titled, "Byway Beginnings: Understanding, Inventorying, and Evaluating a Byway's Intrinsic Qualities." This publication is available on request from the National Scenic Byways Clearinghouse by calling 1-800-4byways and selecting extension #2. This publication provides information about inventorying and evaluating byways' intrinsic qualities. Although the booklet was prepared to assist byway sponsors seeking National Scenic Byway designation, nearly all of the information presented is applicable to sponsors seeking Delaware Scenic and Historic Highway designation.

One important difference between the FHWA publication's guidance and the criteria for Delaware's Scenic and Historic Highway designation should be noted. In discussing "Evaluating the Byway's Significance," on page 55 of the publication, the text references a need to demonstrate "regional" significance, defined as exhibiting at least one intrinsic quality that is representative of a geographic area encompassing two or more states. Delaware's designation criteria do not require that the intrinsic quality be found to have regional significance. Demonstrating significance in a statewide context is sufficient.

DelDOT's Scenic and Historic Highways Coordinator is available to attend meetings and provide phone consultation to prospective Scenic and Historic Highway sponsors regarding the guidance provided in the FHWA publication and the evaluation of intrinsic qualities for purposes of designation as a Delaware Scenic and Historic Highway.

## **Chapter 3: Step – 2 Corridor Plan**

### **What is a Corridor Plan?**

A Corridor Plan is a written document in which the Scenic and Historic Highway sponsor lays out the vision, goals and responsibilities for conserving and enhancing the corridor's most valuable qualities and describes how this will benefit economic development through tourism and recreational opportunities. The Corridor Plan presents a strategy for balancing concern for the intrinsic resources with the visitor's opportunity to experience the Scenic and Historic Highway. It explains how the participants are involved in and responsible for implementing the Plan.

### **Where does a Corridor Plan fit into the designation process?**

A Corridor Plan is required as part of the 2nd Step of the designation process, following the formal designation of a highway as a Delaware Scenic and Historic Highway. The designation as a Scenic and Historic Highway qualifies sponsors for these highways to apply for matching federal National Scenic Byway grant funds to assist in completion of a Corridor Plan. This designation also results in applying to qualifying roads the federal requirement not to allow new outdoor advertising signs to be erected on these roads.

Once a Corridor Plan for the Scenic and Historic Highway has been approved, signs will be placed along the route identifying it as a Delaware Scenic and Historic Highway. It will also be identified on state maps and promoted through the Delaware Tourism Office.

### **Who is responsible for preparing the Corridor Plan?**

The sponsor of the Step 1 – Nomination Application is responsible for preparing the Corridor Plan or for contracting with a consultant to do this. It is the sponsor's responsibility to raise any funds needed to complete the Plan. As stated above, sponsors are eligible to apply for matching federal National Scenic Byway funds for this purpose. Information about these grants is available on the National Scenic Byway Program website, [www.byways.org](http://www.byways.org). Further information on sources of assistance is provided in Chapter 6 of this guide.

### **What information must be included in a Corridor Plan?**

- Vision and Goals Statement with objectives and strategies for achieving the goals.
- Documentation of public involvement efforts to illustrate the support the corridor designation has received from the public.
- Stewardship of intrinsic qualities through resource preservation; through enhancing existing development and accommodating new development in a complementary manner.

- Tourism Development, including an explanation of the tourism potential of the corridor and a description of how the visitor's experience will be maximized and enhanced.
- Marketing and Promotion, including a signage plan supportive of the visitor experience.
- Resources Interpretation, including recommended locations for distributing information.
- Support and Implementation, including relationship to local government comprehensive plans.
- Funding Plan for implementing the Corridor Plan.
- Transportation and Safety, including consideration of appropriate design guidelines for Context Sensitive Design in the corridor, accommodating commercial traffic, accommodating multi-modal uses of the corridor to the extent feasible, and complying with outdoor advertising controls.
- Short-term Action Plan for implementation.

An appendix should include the following information from the Step 1 – Nomination Application:

- A physical description of the route.
- Representative photographs.
- A map indicating the boundaries of the route, that locates the intrinsic qualities along the corridor and indicates land uses in the corridor.
- An intrinsic quality resource inventory.
- A written statement that summarizes and evaluates the significance of the primary intrinsic quality for which the highway merits designation and that also describes the significance of any secondary intrinsic qualities present along the route.
- A written description of what a traveler will see when traversing the corridor.
- A description of public involvement conducted to date and the comments and input that have resulted from this process.

#### **Who reviews the Corridor Plan and what is the review process?**

The DeIDOT Scenic and Historic Highways Coordinator reviews the Step 2 – Corridor Plan Application and makes a recommendation to DeIDOT's Director of Planning. DeIDOT's Director of Planning submits the Corridor Plan Application to the State Scenic and Historic Highways Advisory Board for review along with his/her recommendation and comments. If the Board recommends approval, the application is submitted to the DeIDOT

Secretary of Transportation for review and a final decision.

#### **What are the timelines for reviewing Step 2 – Corridor Plan Application?**

There will be ongoing reviews of Step 2 – Corridor Plan Applications by the Scenic and Historic Highways Coordinator and by the Advisory Board. Generally DeIDOT will respond to the applicant within 90 days from the time that a complete Step 2 – Corridor Plan Application is received.

#### **What is the impact of approval of a Corridor Plan?**

If the Corridor Plan is approved, DeIDOT will provide signs for the route to indicate its designated status and will identify the route on state maps. Delaware's Office of Tourism will promote the Delaware Scenic and Historic Highway in accord with the promotion and marketing plans included in the Corridor Plan.

#### **Information about elements that must be included in a Corridor Plan.**

The major elements that must be included in a Corridor Plan for a Delaware Scenic and Historic Highway are summarized in this section. Guidance on how to develop information on these elements can be found in the Federal Highway Administration's (FHWA) booklet titled, "Community Guide to Planning and Managing a Scenic Byway." As with the publication, "Byway Beginnings," referenced in Chapter 3, this publication is available from the National Scenic Byways Clearinghouse by calling 1-800-4byways and selecting #2. Although the booklet was prepared to assist byway sponsors seeking National Scenic Byway designation, the information presented will be of great help to sponsors seeking to develop corridor plans for Delaware Scenic and Historic Highways.

- Vision and Goals Statement with objectives and strategies for achieving the goals

A Vision is a mental image of the condition of the Scenic and Historic Highway corridor and the accomplishments of the Sponsor group in the future (say 20 years from now). It is a corridor-wide expression of how the corridor will be viewed in the future. The Goals Statement elaborates on the Vision by identifying the broad goals that will implement the Corridor Plan. These will likely be oriented towards areas of 1) Resource protection, maintenance and enhancement; 2) Community support and participation; 3) Education and interpretation; 4) Economic development through tourism; and 5) Transportation and safety. An objective is an end that one strives to obtain, or an aim. A strategy is a plan or action to achieve an objective based on skillful understanding of how best to achieve that objective.

- Documentation of Public Involvement efforts to illustrate the support the corridor designation has received from the public

Every opportunity must be taken to generate regional support and commitment to the scenic and historic highway designation and to the development and eventual implementation of the Corridor Plan. A Scenic and Historic Highway's success can be assured only if local residents, business owners and public officials understand and support the designation and have a sense of participation and ownership of the Vision and Goals outlined in the Corridor Plan. Therefore, development of a Corridor Plan includes a concerted effort to actively engage the public throughout the process. This can be done by creating a broad-based steering committee to oversee the development of the Corridor Plan; conducting informative public meetings; involving citizens in small working group sessions to develop elements of the plan based upon their interests and expertise; keeping people informed of the Corridor Plan effort through newspaper articles; and many other techniques tailored to the needs of the specific community or communities.

The Corridor Plan should briefly document public involvement efforts during preparation of the Plan and outline a plan to assure on-going public involvement in the implementation of corridor management objectives.

- Stewardship of intrinsic qualities through resource preservation; through enhancing existing development and accommodating new development in a complementary manner

The stewardship plan should address the strategies, tools and techniques that will be employed to manage, protect and enhance resources that distinguish the route. Specific strategies will vary widely across the state depending on local conditions, population, economic conditions, political climate and the intensity or severity of threats to the resources. Some examples of potential strategies include conservation easements, education programs and historic district designations. Identify the standards and management techniques which will be applied to the significant resources.

The Corridor Plan should describe how existing and new development might be enhanced while managing the corridor's significant resources. For example, are there any major intrusions on the enjoyment or character of the roadway? If so, describe what could be done to improve these conditions.

Strategies in individual Corridor Plans might recommend design review and such land management techniques as zoning, easements, and economic incentives.

The corridor should be maintained with particularly

high standards, not only for travelers' safety and comfort, but also for preserving the highest levels of visual integrity and attractiveness. It may be adequate simply to continue existing regulations and policies or economic incentives, or new policies, programs or regulations may be needed. To determine the appropriate strategies, communities are encouraged to work with local, county and regional planning agencies. College or university landscape architecture, planning and tourism programs may also provide assistance.

- Tourism Development, including an explanation of the tourism potential of the corridor and a description of how the visitor's experience will be maximized and enhanced

Sponsors must provide a basic explanation of the tourism potential for the Scenic and Historic Highway. You should summarize how and to what degree the designation and promotion of the corridor will improve the local economy and indicate whether the area is already serving tourists or if tourism will be a new industry.

Identify visitor accommodations (e.g. gas, food, lodging, restrooms, emergency services, ATMs, phones, parking, etc.) that are available along the corridor. Assess whether the existing supply is adequate to meet the demand to be generated by the Scenic and Historic Highway. In other words, what other services might be helpful to maximize the amount of time a visitor spends along the corridor?

Describe how the visitor's experience will be maximized and enhanced. Explain how intrusions on that experience will be minimized through making improvements to enhance that experience.

- Marketing and Promotion, including a signage plan supportive of the visitor experience

Sponsors must outline the objectives for marketing or promotion of the Scenic and Historic Highway. These goals will vary depending on the comments received during the public involvement process. Such goals may focus on doing a better job of educating residents about the heritage of the area, or may focus on increasing tourism to the area, or include some other objectives. New opportunities for a community may result from the increased exposure a Scenic and Historic Highway receives. This exposure can be gained in a number of ways, such as by distribution of maps and trip planning brochures or developing pre-planned itineraries for bus tour companies, installation of Scenic and Historic Highway signage or targeted advertising campaigns.

The Corridor Plan must include a signage plan covering signs in the right-of-way as well as the corridor as a whole, that demonstrates how public and private interests can work together with a coordinated strategy to make the number and

placement of signs more supportive of the visitor experience. Local government officials should play an important role in developing this strategy.

- Resources Interpretation, including recommended locations for distributing information

You need to provide a description of how you plan to interpret the significant resources of the Scenic and Historic Highway. Briefly describe the stories illustrated by resources of the Scenic and Historic Highway that will serve as a basis for interpretation. You should include recommended locations for the placement of visitor centers, interpretive markers, interpretive brochure distribution points and other planned interpretive opportunities.

- Support and Implementation, including relationship to local government comprehensive plans

The continuation of the Scenic and Historic Highway over time will need a capable management entity (or sponsor group) responsible for day-to-day coordination and advocacy of the highway. The Plan should describe the management entity for the Scenic and Historic Highway, identify the principal partners (e.g., highway departments, tourism agencies, chambers of commerce, county government, citizens groups, etc.), and include a list of their specific, individual responsibilities. The Plan should include a letter of intent (i.e., commitment) from strategic partners of support for the Scenic and Historic Highway's designation and their participation in the Plan's implementation.

Obtain a letter of intent or resolution of support by local governments (from the chief elected official or body) with jurisdiction along the roadway that indicates support for the designation and intent to incorporate the following items in local land use plans: a map that shows the Scenic and Historic Highway corridor, the corridor vision statement and the goals, objectives and strategies related to the specific local government.

List all organizations with responsibility for the implementation of the Plan and identify what those responsibilities are. Explain how the implementation will be monitored to verify that those responsibilities are being met and modified, as needed, to incorporate new participation.

- Funding Plan for implementing the Corridor Plan

Develop and include a budget that estimates the costs for implementation of the Plan over a five to ten year period.

Address the availability of financial resources needed to upgrade, protect, develop, promote and/or otherwise

enhance the corridor and implement the Corridor Plan to make the Scenic and Historic Highway and its corridor available for its intended uses. Indicate funding currently in hand and funds that have been requested, and the sources for these funds. For funding that is presently not available, indicate how you plan to locate funding sources.

- Transportation and Safety, including consideration of appropriate design guidelines for Context Sensitive Design in the corridor, accommodating commercial traffic, accommodating multi-modal uses of the corridor to the extent feasible, and complying with outdoor advertising controls.

The Corridor Plan should identify the potential safety, operational and maintenance impacts of the designation based on available information, their causes, and actions possible to address them. The initial step towards accomplishing this is to contact the agency responsible for maintenance of the highway. This agency can share available information and provide expertise to identify any correctable faults in highway design, maintenance, or operation.

In addition, this agency can describe the types of transportation projects that will likely arise within the corridor over a ten to fifteen year period. The Plan should identify these expected project types and make broad recommendations for general solutions applying the principles of Context Sensitive Design. This discussion should include an evaluation of how any proposed changes may affect the intrinsic qualities of the corridor.

The Plan should include a narrative describing strategies to accommodate commercial traffic while maintaining a safe and efficient level of highway service and ensuring the safety of sightseers in smaller vehicles, as well as bicyclists, joggers and pedestrians.

The Plan should address accommodating multi-modal uses of the corridor to the extent feasible. The corridor may be served by rail service, car ferries, airports, buses, or bicycles. It may be helpful to contact local or regional transportation planning agencies to help assess the role of all transportation facilities and services for visitor access and use of the Scenic and Historic Highway. Describe in the Corridor Plan any recommendations for improvements and changes to these services and facilities as they relate to visitor access and use of the highway.

The Corridor Plan should describe existing local, state and federal laws regarding the control of outdoor advertising and should demonstrate compliance with these laws.

- Short-Term Action Plan for implementation

The Corridor Plan should include a short-term action plan covering the first two to three years of implementation

of the Plan. The action plan outlines the sequence of actions that the Sponsor will perform or oversee in an effort to meet the goals, objectives and strategies and, ultimately, achieve the Corridor Vision. The Plan should provide specific milestones month-by-month for implementation actions stating who is responsible for each. The action plan should include a schedule and performance measures for the continuing review of how well implementation responsibilities are being met.

## **Chapter 4: Implementation of Corridor Plans**

### **Is there a periodic review of the routes that have been designated?**

The Scenic and Historic Highway Sponsor is required to monitor implementation of the Corridor Plan annually, including the protection of intrinsic qualities, by providing a written status report to DeIDOT's Scenic and Historic Highways Coordinator. This report should describe progress made in implementing the plan, funds secured, accomplishments achieved, and modifications made to the Corridor Plan based on evolving circumstances.

Additionally, DeIDOT's staff will conduct inspections annually to ensure the stability of intrinsic qualities and the character of the corridor for which it merited designation and to assess progress made in implementing the Corridor Plan. DeIDOT staff will prepare a written report to document their findings and send this to the Corridor Sponsor and other responsible agencies. DeIDOT staff will encourage corrective actions if necessary. DeIDOT will also submit these reports to the Scenic and Historic Highways Advisory Board.

## **Chapter 5: De-designation of Scenic and Historic Highways**

### **Is there a de-designation process?**

A Delaware Scenic and Historic Highway may be de-designated for two reasons: first, if the corridor is designated, but a Corridor Plan is not completed in a timely manner; and second, if the corridor loses the qualities for which it was designated.

Once a Scenic and Historic Highway has been designated by the Secretary of Transportation, the sponsor group has five years from the date of designation to complete an approved Corridor Plan for the Scenic and Historic Highway. If a Plan is not completed and approved by this date, the Scenic and Historic Highway will be automatically de-designated as a State Scenic and Historic Highway.

The second condition that might result in de-designation is related to DeIDOT's annual inspection of Scenic and Historic Highways. When DeIDOT's Scenic and Historic Highways Coordinator conducts an inspection and he or she identifies such a substantial change in the quality, level, or

integrity of intrinsic qualities that it appears that the corridor no longer meets the criteria for designation, the de-designation process may be initiated. This process may only begin, however, after DeIDOT has indicated its concerns to the Sponsor in written form including, if possible, a plan for remedial action to restore the qualities for which the roadway was designated, allowing a one-year period for showing progress. DeIDOT can allow more time to accomplish remedial action if necessary. If, however, no remedial action plan is agreed upon, DeIDOT will proceed with de-designation.

The de-designation process will follow generally the same process as the Corridor Plan review process. DeIDOT's Scenic and Historic Highways Coordinator will prepare information documenting how the corridor no longer meets the criteria for designation. This information will be reviewed by DeIDOT's Director of Planning and submitted with his or her recommendation to the State Scenic and Historic Highways Advisory Board for their recommendation. The Advisory Board's recommendation will be submitted to the Secretary of Transportation for a decision on de-designation.

In addition to DeIDOT's ability to initiate a de-designation inquiry, any interested party, including individuals, local governments, counties, tourism departments, historical societies, non-profit organizations and state and federal agencies, may request in writing that DeIDOT initiate this process. This request should include documentation of the reason why the requestor believes the roadway no longer meets the criteria for designation of Scenic and Historic Highways.

Whether DeIDOT initiates an inquiry into de-designation or a member of the public requests this inquiry, public notice will be provided.

## **Chapter 6: Sources of Information to Assist Scenic & Historic Highway Sponsors**

### **General information**

Information to assist Scenic and Historic Highway sponsors will come from a multitude of sources. With DeIDOT as the sponsor agency for the program, a Sponsor should start by contacting the DeIDOT Scenic and Historic Highways Coordinator to receive all available program information. DeIDOT staff will provide phone consultation to prospective Scenic and Historic Highway sponsors and assist with public involvement to the extent resources are available. If funding can be secured, DeIDOT will provide training in public involvement and other skills needed to develop Corridor Plans.

Many other agencies and organizations will be able to assist Sponsors as well. Foremost among these is the Federal Highway Administration (FHWA) through its publications referenced in Chapters 2 and 3, "Byway

Beginnings: Understanding, Inventorying, and Evaluating a Byway's Intrinsic Qualities" and "Community Guide to Planning & Managing a Scenic Byway" and through its website at [www.byways.org](http://www.byways.org). The publications are available by calling FHWA's Scenic Byways Clearinghouse at 1-800-4byways and choosing extension #2. Other publications available include a map of National Scenic Byways and All American Roads.

Using the same 1-800-4byways phone number and choosing extension #5, a caller reaches the America's Byways Resource Center, a source of information for developing statewide scenic byways programs, and for byway sponsors seeking National Scenic Byway designation. Staff at the center are assigned to specific states, so ask for the staff person assigned to Delaware. The website includes a wealth of information for byway sponsors with the opportunity to "Ask an Expert" questions and links to many state scenic byway sites.

A list of the member organizations of Delaware's Scenic and Historic Highways Advisory Board is listed in the appendix. These groups have helped to shape the program and many have expertise that will be valuable in developing the Step 1 – Nomination Application and Step 2 – Corridor Plan Application. The FHWA publications mentioned above cite the types of information likely available in state level organizations for resource identification, resource protection and interpretive strategies, etc. Delaware's Office of Tourism staff will be able to inform Scenic and Historic Highway sponsors of current marketing efforts and evolving themes for future marketing that sponsors may want to use as a basis for interpretive efforts.

To help with your nomination and Corridor Plan efforts, the FHWA suggests that you consider recruiting community leaders who have experience in planning and organizing projects. Their expertise in grant writing, political maneuvering, project management, conflict resolution and other related skills may prove extremely useful.

Local, state, and federal government staff can be a considerable help, particularly those who work in the fields of transportation planning, resource conservation, economic development and tourism. Also colleges and state universities are likely to have individuals who can assist the Sponsor group in technical expertise (from departments of landscape architecture, architecture, planning, historic preservation, geography, history, natural resources, recreation planning, and government, for example).

You may also want to contact state and regional chapters of professional organizations, including the American Planning Association, and the American Society of Landscape Architects, and environmental and preservation organizations like Scenic America, the Nature Conservancy, Trust for Public Land, the National Trust for Historic Preservation and Preservation Delaware.

Remember to involve business leaders in your efforts.

These leaders may have limited time to spare, but if you use their time well, their ideas may be critical to the success of the overall scenic byway effort.

### **Funding**

The passionate efforts of committed volunteers along with time devoted by state and local agency staff, will go a long way toward assembling the critical mass of effort needed to prepare at Step 1 – Nomination Application and Step 2 – Corridor Plan. However, some level of funding will likely be needed to complete these efforts. Creative partnering is a good first step toward securing needed resources, both expertise and financial. Many suggestions are made in the previous section of this chapter. While some of your partners may be familiar with funding sources from government programs, others may know foundation sources interested in collaborative and positive outcomes likely from a scenic byway planning and implementation process. Still others, particularly business leaders, may know of corporate sources willing to sponsor your effort.

Once a route has received state Scenic and Historic Highway designation as a result of approval of the Step 1 – Nomination Application, it is eligible for federal funding for corridor planning from the FHWA. Federal grants are available on a competitive basis with applications due generally about June 1 of each year. DeIDOT's Scenic and Historic Highways Coordinator will have complete information available on this funding. The [byways.org](http://byways.org) website includes a list of activities eligible for funds, listings of grants awarded in past years, and an application for future grant awards. There is a matching requirement of 20% for the federal funds awarded.

### **Cooperative efforts with neighboring states**

The nearby states of Maryland and New Jersey have particularly active scenic byways programs and are interested in byway proposals that might cross state lines. For example, the Underground Railroad, an important theme in Delaware's history, is also being interpreted as part of Maryland's Chesapeake Country Byway. You may wish to contact the state scenic byways coordinators for these states to discuss possible partnership opportunities. DeIDOT's Scenic and Historic Highways Coordinator can provide you with contact information.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF FUNERAL SERVICES  
24 DE Admin. Code 3100  
Statutory Authority: 24 Delaware Code,  
Section 3105(a)(1) (24 Del. C. § 3105(a)(1))**

A Public Hearing was held to receive comments on July 25, 2001 at the regularly scheduled meeting of the Board of Funeral Services. At the meeting that followed, the Board considered changes to Rules 4.0 relating to funeral establishment permits and Rule 9.0 relating to continuing education as published in the Register of Regulations, Vol. 4, Issue 12, June 1, 2001.

**Summary of the Evidence and Information Submitted**

Written comment was received from James P. Keith, F.D. He believes that the continuing education change stiffens the requirement and objects. He was concerned about the wording in Rule 4.2.

There were no verbal comments were received.

**Findings of Fact with Respect to the Evidence and Information**

1. The changes to Rule 4.0 clarify the terms

‘establishment’ and ‘satellite’ as used in the rules and explain the exemption provision.

2. The changes to Rule 9.0 advise practitioners of the need to select continuing education activities that enhance the service to the public.

**Decision and Effective Date**

The Board of Funeral Services hereby adopts the changes published as proposed Rules 4.0 and 9.0 to be effective 10 days following final publication in the Register of Regulations with one clerical change. In Rule 4.2 the code reference is to 24 Del. C. 3101(6), not (b).

**Text and Citation**

The text of the changes to Rules 4.0 and 9.0 remain as published Register of Regulations, Vol. 4, Issue 12, June 1, 2001 with the clerical change noted above.

**Board Of Funeral Services**

J. Thomas Sturgis, Jr., Ed.D., President  
Richard W. Harra  
Kelly Ann Pepper  
William J. Doherty II

**Board of Funeral Services**Statutory Authority: 24 **Del.C.** 3105(a)(1)

- 1.0 Duties of the Officers
- 2.0 Licensure Requirements
- 3.0 Federal Trade Commission Regulations
- 4.0 Establishment Permits
- 5.0 Duplicate Certificate
- 6.0 Suspension - Revocation or Lapse of Funeral Director's License
- 7.0 Cash Advance
- 8.0 Code of Ethics
- 9.0 Continuing Education Regulations
- 10.0 Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Duties of the Officers**

1.1 The President shall preside at all meetings, call meetings, sign certificates with other Boardmembers or other forms that may be required by him or her by law.

1.2 In the absence of the President, the Secretary shall preside at the meetings and call meetings when the President is absent. However, the signatory duties of the President may not be transferred to the Secretary.

1.3 In accordance with 29 **Del.C.** §8807, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license.

1.4 The Division shall also cause to be collected all fees including license application fees, renewal fees or any other fee required to be paid in accordance with the provisions of 24 **Del.C.** Ch. 31, et.seq.

1.5 In accordance with the Freedom of Information Act, 29 **Del.C.** §10004(c), the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda may be subject to change to include additional items not on the agenda including executive sessions closed to the public which arise at the time of the Board's meeting.

1.6 The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with 29 **Del.C.** §8807 and 24 **Del.C.** §3103(d).

**2.0 Licensure Requirements**

2.1 Requirements for licensing of those applying for a Funeral Director's license in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 **Del.C.** §3107(a)(1)-(9) and 24 **Del.C.** §3109.

2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in mortuary science, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the educational requirements contained within 24 **Del.C.** §3107. The applicant shall request that a copy of an official transcript be sent to the Board.

2.3 The equivalent of an Associate Degree as that term is used in 24 **Del.C.** §3107 and herein is a certificate in mortuary science that required a minimum of thirty (30) semester credit hours. In addition to said certificate, sufficient semester credit hours earned from a regionally accredited institution of postsecondary education, so that the applicant has earned a total of at least sixty (60) semester credit hours, are required.

2.4 The Division, upon request of a registered intern or applicant seeking licensure via reciprocity, shall administer the State examination required by 24 **Del.C.** §3107(a)(3) based solely upon the laws and regulations of Delaware which may govern, impact on, and relate to the profession including preneed funeral service contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries.. An applicant for full licensure, whether via initial or reciprocal licensure, shall be deemed to have successfully passed the state examination with a minimum grade of 70%. The national examination required by 24 **Del.C.** §3107(a)(2) may be taken before or during the internship.

2.5 As required by 24 **Del.C.** §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. In order for an applicant to apply for an internship, the applicant shall have certified on a form approved by the Board that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports and four (4) completed quarterly work reports evidenced by a notarized statement by the sponsor. An intern may be given one extension of his or her internship for an additional year.

**See 4 DE Reg. 159 (7/1/00)**

**3.0 Federal Trade Commission Regulations**

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission

Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services as defined under 24 **Del.C.** §3101(7). Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 **Del.C.** Ch.31, et seq. if these rules or regulations have been violated by the licensee.

#### 4.0 Establishment Permits

4.1 ~~The requirements for the issuance, continuance, and proper maintenance of a funeral establishment permit are contained in 24 **Del.C.** §3117. In accordance with 24 **Del.C.** §3117(a)(2), the funeral establishment shall be conducting funeral services from a building that is appropriate as defined in 24 **Del.C.** §3101(5). All establishments, both newly issued and those grandfathered by 24 **Del.C.** §3117 (a)(1), shall in said building have preparation rooms which shall be locked. Licensed funeral directors shall exercise full control over preparation rooms and supplies.~~

4.2 ~~All funeral establishments provided a permit in accordance with the requirements of 24 **Del.C.** §3117 shall, in addition to conforming with all safety requirements of the State Department of Health and Social Services, provide the following:~~

4.2.1 ~~A room for the preparation and embalming of human remains;~~

4.2.2 ~~Said preparation room shall contain embalming equipment and supplies.~~

4.3 ~~Funeral Establishment Permit: Circumstances for Termination and Continuation:~~

4.3.1 ~~The statutory requirements for the issuance of a funeral establishment permit are contained in 24 **Del.C.** §3117.~~

4.3.2 ~~To be exempt from the provisions of 24 **Del.C.** §3117(a)(2), the funeral establishment shall have been maintained, operated and conducted on a continuous basis prior to September 6, 1972 until the present date. Further, only the record owner of the funeral establishment shall be entitled to obtain said exemption. No assignment of the exemption rights contained in 24 **Del.C.** §3121 (a)(2) is permitted and no other licensed funeral director may apply for or be assigned said rights.~~

4.3.3 ~~If a licensed funeral director relocates or otherwise moves a funeral establishment that has been granted an exemption pursuant to the provision of 24 **Del.C.** §3117(a)(2) from its original location, the exemption allowed under 24 **Del.C.** §3117(a)(2) shall immediately become null and void. For purposes of this section the term "move" or "relocate" is defined as to place such establishment outside the original building's location at its exact address of record unless the building where the funeral establishment permit is contained is renovated.~~

4.1 The Board shall issue and renew establishment permits as provided in 24 **Del.C.** §3117. As used herein, an establishment is the building or structure where the practice of providing funeral services is conducted.

4.2 Unless exempt under 24 **Del.C.** §3101(~~5~~)(6), the building in which funeral services are provided shall contain a room having the fixtures necessary for the care and preparation of human remains for funeral service, burial, entombment or cremation.

4.2.1 A satellite funeral establishment is a place where the practice of providing funeral services is conducted at a location separate from the primary place of business.

4.2.2 A satellite funeral establishment retains the exemption only so long as it is continuously operated as an adjunct to the primary place of business.

4.3 Unless exempt under 24 **Del.C.** §3117(a)(2), a funeral establishment shall have a licensed funeral director in charge full time therein.

4.3.1. A funeral director is in charge full time so long as the director is on the premises when funeral services are being provided.

4.3.2 A business operating in a funeral establishment since September 6, 1972 retains an exemption under 24 **Del.C.** § 3117(a)(2) only so long as the record owner of the business does not change.

4.4 All funeral establishments shall conform with the health and safety regulations promulgated by agencies of the State of Delaware have regulatory authority.

#### 5.0 Duplicate Certificate

Any licensed funeral director may obtain a duplicate funeral director's certificate upon proof of satisfactory evidence to the Board that the original has been lost or destroyed and a payment of a fee as set by the Division of Professional Regulation.

#### 6.0 Suspension - Revocation or Lapse of Funeral Director's License

During any period a licensed funeral director's license has lapsed, been revoked or suspended by the Board in accordance with 24 **Del.C.** §§3111 or 3114, no other licensed funeral director in the State of Delaware may register death certificates or secure burial permits for the licensee whose license has been revoked, suspended or has lapsed. Nor shall the licensee whose license has lapsed, been revoked or suspended by the Board, be able to register death certificates or secure burial permits. The Board may notify the Division of Public Health, the Department of Health and Social Services, the Medical Examiner's Office or other appropriate state or federal agency that said funeral director is prohibited from practicing funeral services as defined by 24 **Del.C.** Ch. 31.

**7.0 Cash Advance**

7.1 A licensed funeral director in the State of Delaware is prohibited from billing or causing to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item is for funeral services in the same amount as is billed by the funeral director. A cash advance item is payment made by the funeral director for the consumer to a third party including but not limited to cemetery fees, crematory fees, death certificates and florists.

7.2 The effective date of these regulations is the 6th day of December, 1989 in accordance with 29 **Del.C.** §10118 (b).

7.3 The following rules are adopted by the board as a supplement to the Rules and Regulations governing the State Board of Funeral Services, previously adopted and promulgated on the 6th day of December, 1989 pursuant to 24 **Del.C.** §3105 (a)(1) and the Administrative Procedures Act, 29 **Del.C.** §10115.

**8.0 Code of Ethics**

8.1 The following is adopted as the code of ethics for all funeral service licensees in the State of Delaware.

8.1.1 As funeral directors, we herewith fully acknowledge our individual and collective obligation to the public, especially to those we serve, our mutual responsibilities for the proper welfare of the funeral services profession.

8.1.2 To the public we pledge: vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and service standards; conduct befitting good citizens, honesty in all offerings of service and merchandise to the public and all business transactions.

8.1.3 To those we serve we pledge: confidential business and professional relationships; cooperation with the customs, laws, religions and creeds; observance of all respect due to the deceased; high standards of confidence and dignity in conduct of all services; truthful representation of all services and merchandise.

8.1.4 To our profession we pledge: support of high educational standards and proper licensing law; encouragement of scientific research; adherence to sound business practices; adoption of improved technique; observance of all the rules of fair competition and maintenance of favorable personnel relations.

**9.0 Continuing Education Regulations****9.1 Board Authority**

9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

**9.2 Requirements**

9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. All CE credit hours must further the licensee's skills and understanding in the field of funeral services. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

9.2.2 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

9.2.3 Upon application for renewal of a license, a funeral director licensee shall submit to the Board proof of completing the required number of CE credit hours.

**9.3 Waiver of the CE Requirement**

9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health or military service. Application for exemption shall be made in writing to the Board by the applicant for renewal. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

**9.4 Continuing Education Program Approval**

9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

9.4.3 Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

9.4.4 The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.

- Business management concepts relating to delivery of goods and services.

- Technical aspects of the profession.
- Public relations.
- After care counseling.

9.4.5 Application for CE program approval shall include the following:

9.4.5.1 Date and location.

9.4.5.2 Description of program subject, material and content.

9.4.5.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

9.4.5.4 Name of instructor(s), background, expertise.

9.4.5.5 Name and position of person making request for program approval.

9.4.6 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.7 Approval of CE credits and program formats by the Committee shall be valid for a period of two years from the date of approval. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.8 Upon request, the Board shall mail a current list of all previously approved programs.

#### 9.5 Continuing Education Committee

9.5.1 The Board of Funeral Services shall appoint a committee known as the Continuing Education Committee. The Committee shall consist of the following who shall elect a chairperson:

9.5.1.1 One (1) Board member (non-licensed).

9.5.1.2 One (1) non-Board member who shall be a licensed funeral director who is owner/operator of a funeral establishment.

9.5.1.3 One (1) non-Board member who shall be a licensed funeral director who does not own or operate a funeral establishment.

9.5.2 Membership on this Committee shall be on a rotating basis, with each member serving a three year term and may be eligible for reappointment. The Committee members shall continue to serve until a new member is appointed.

9.5.3 The Continuing Education Committee shall oversee matters pertaining to continuing education and make recommendations to the Board with regard to approval of submitted programs for CE by licensees and with regard to the Board's review of audited licensees. The Board shall have final approval on all matters.

#### 9.6 Certification of Continuing Education - Verification

and Reporting

9.6.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.6.2 Verification of completion of an independent study program will be made with a student transcript.

9.6.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. Proof shall consist of completed CE form provided by the Board and shall be filed with the Board on or before thirty (30) days prior to the expiration date of the biennial renewal period.

9.6.4 Applications for renewal may be audited by the Board to determine whether or not the recommended requirements of continuing education have been met by the licensee.

9.6.5 If a licensee is found to be non-compliant in continuing education, the licensee's license shall lapse at the expiration of the present licensing period. The Board shall reinstate such license within twelve (12) months of such lapse upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

9.6.6 Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all Delaware licensees upon written application and verification of CE credits by the applicable state board.

### 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

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

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

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

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

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

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

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

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any

treatment information from anyone within the approved treatment program.

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

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

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

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

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

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

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

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

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

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

24 DE Admin. Code 3500

Statutory Authority: 24 Delaware Code,  
Section 3506(a)(1) (24 Del. C. § 3506(a)(1))

**Order Adopting Rules and Regulations**

AND NOW, this 30<sup>th</sup> day of July, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Examiners of Psychologists of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

**I. Nature of the Proceedings**

Pursuant to the Board's authority under 24 *Del. C.* § 3506(a)(1), the Board proposed to revise its existing Rules and Regulations to establish a requirement that requests for postponement of a matter that is scheduled to be heard by the Board be made in writing and submitted no less than three (3) business days prior to the date scheduled for the hearing. In addition, the proposed revisions to the Rules and Regulations establish a maximum of one (1) postponement per party absent a showing of exceptional circumstances. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated May 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on June 4, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

**II. Evidence and Information Submitted**

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. No public comment was received at the June 4, 2001 hearing.

**III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to clarify that requests for postponement be in writing and be submitted no less than three (3) business days prior to the scheduled hearing. In addition, the proposed amendments are necessary to establish a maximum of one postponement request per party absent a showing of exceptional circumstances. The proposed amendments will assist applicants and licensees in understanding the process applicable to postponement of a scheduled hearing.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 3506(a)(1) that implement or clarify the Board's statutes.

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 35.

**IV. Decision and Order to Adopt Amendments**

NOW, THEREFORE, by unanimous vote of a quorum of the Board, IT IS ORDERED, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

**By Order Of The Board Of Examiners Of Psychologists**

(As authenticated by a quorum of the Board)

Sharon L. Mitchell, Ph.D., President, Professional  
Member

Constance Dancu, Ph.D., Vice President, Professional  
Member

Peter B. Appel, Ph.D., Secretary, Professional Member

Bobby Benjamin, Public Member

Richard Lindale, Public Member

Shirley Reichelt, Public Member

Frank Szczuka, Public Member

William Ulmer, Jr., M.Ed., Professional Member

Edward S. Wilson, Ph.D., Professional Member

**Board of Examiners of Psychologists**

- 1.0 General Rules and Regulations
- 2.0 Official Board Office
- 3.0 Meetings of the Board
- 4.0 Officers of the Board
- 5.0 Procedures for Licensure
- 6.0 Evaluation of Credentials
- 7.0 Supervised Experience
- 8.0 Failure to Pass Examination
- 9.0 Psychological Assistants
- 10.0 Continuing Education
- 11.0 Professional Conduct
- 12.0 Complaint Procedures
- 13.0 License Renewal
- 14.0 Procedures for Licensure Applicable to Full-Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals
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**1.0 General Rules and Regulations**

The Board of Examiners of Psychologists has been established under the 24 **Del.C.** Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

**2.0 Official Board Office**

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

**3.0 Meetings of the Board**

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public

shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

**4.0 Officers of the Board**

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

**5.0 Procedures for Licensure****5.1 Application - Initial Licensure**

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

**See 3 DE Reg 1067 (2/1/00)**

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 **Del.C.** §3508(a)(4)]

5.1.1.5 The application shall not be considered

complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

#### 5.2 Application - By Reciprocity

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 Del.C. §3511, shall submit evidence that he/she meets the following requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP). The Board shall accept a score of 70% or better, or, for examinations taken prior to 1992, the minimum passing score accepted by the Delaware Board in the year the examination was taken.

#### See 4 DE Reg. 979 (12/1/00)

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

### 6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 Del.C. §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

#### See 2 DE Reg. 776 (11/1/98)

#### See 4 DE Reg. 980 (12/1/00)

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal

psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

**See 2 DE Reg. 776 (11/1/98)**

## **7.0 Supervised Experience**

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under 24 **Del.C.** §3519(e). For those individuals the accrual of 3,000 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training

program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

**See 2 DE Reg. 776 (11/1/98)**

## **8.0 Failure to Pass Examination**

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

## **9.0 Psychological Assistants**

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e). This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the

treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 Del.C. §3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of

treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

**See 2 DE Reg. 776 (11/1/98)**

### **10.0 Continuing Education**

10.1 Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

Hardship. An applicant for license renewal or

registered psychological assistant may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not complete the requisite continuing education pursuant to the terms of the extension.

**See 4 DE Reg. 983 (12/1/00)**

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

**See 2 DE Reg. 776 (11/1/98)**

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

### 11.0 Professional Conduct

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del.C. §3514.

### 12.0 Complaint Procedures

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 Del.C. §8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 Del.C. Chapter 101.

12.2 Complaints must be filed, in writing, with the

Division of Professional Regulation.

### 13.0 License Renewal

13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of a change of name or address.

13.2 Continuing education requirements must be fulfilled as detailed in Section 10.0 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3 . Should any psychologist fail to renew or obtain a hardship extension and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew or obtain a hardship extension and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

**See 4 DE Reg. 984 (12/1/00)**

### 14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 Del.C. §3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have completed the doctoral degree at the time employment commences consistent with 24 Del.C. §3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements

commences with the initial date of employment. The six-year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7.0 of the Rules and Regulations.

**See 2 DE Reg. 776 (11/1/98)**

### **15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

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

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

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

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary

Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

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 chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good

faith and without malice.

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

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 Hearings-Requests for Postponement**

Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) business days before the date scheduled for the hearing. Absent a showing of exceptional circumstances, there shall be a maximum of one postponement allowed to each party to any hearing.

## **DEPARTMENT OF EDUCATION**

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

### **Regulatory Implementing Order 101 Delaware Student Testing Program**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 101 Delaware Student Testing Program. The amendments to 1.0, 3.0, and 4.0 reflect the changes in 14 *Del. C.* § 152 and § 153 as per SB 106 on high school diplomas, off grade testing and on promotion and retention procedures. In section 2.4 the reference to "Near the Standard" has been deleted.

Section 7.0 (formally 2.0) on security and confidentiality has been amended by deleting sections 7.3.1 through 7.3.7 because testing behavior violations and data reporting violations are covered in 14 *Del. C.* § 172 and § 173 as per SB 157. Section 7.0 (formally 2.0) has been further amended by adding 7.4 Procedures for Reporting Security Breaches. Other amendments include a new 5.0 that describes who is responsible for providing summer school programs, a new 6.0 that describes how the high school diploma index is applied and a new 8.0 that describes procedures for reviewing questions and response sheets from the DSTP.

Comments on the amendments to this regulation were received from the Governors Advisory Council For Exceptional Citizens and the State Council for Children with Disabilities. The Department has added the comment suggested by these councils relating to the placement of special education students as 3.3.3. The Department believes that the proposed amendments to this regulation are consistent with the state and federal law but recognizes and will continue to revisit the concerns expressed by these organizations about diplomas and graduation requirements for special education students and for section 504 eligible students.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 25, 2001 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### **II. Findings of Facts**

The Secretary finds that it is necessary to amend this regulation to reflect the changes in the statute and to describe how the diploma index is applied. Procedures for reviewing questions and response sheets from the DSTP were also necessary to define that process for the school districts and

for the public.

### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C. Section. 122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions of 14 Del. C. Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in SectionV. below.

### **IV. Text and Citation**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the *Regulations of the Department of Education*.

### **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C. Section. 122, in open session at the said Board's regularly scheduled meeting on August 16, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 16th day of August, 2001.

#### **DEPARTMENT OF EDUCATION**

Valerie A Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of August, 2001.

#### **STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

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

1.0 ~~General~~ Definition: The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All

districts and charter schools shall participate in all components of the DSTP including field test administrations.

~~Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education. The assessments shall be administered to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science.~~

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

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

~~[2.0 3.0 Levels of Performance: For assessments administered to students in grades 3, 5, 8, and 10 in the content areas of reading, mathematics and writing and to the students in grades 4, 6, 8 and 11 in the content areas of social studies and science, there shall be five levels of student performance relative to the State Content Standards on the assessments administered pursuant to the Delaware Student Testing Program. Said Levels are defined and shall be determined as follows]~~

[2.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. Said levels are defined and shall be determined as follows:]

2.1 ~~3.1~~ 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, using test data and the results from the Standard Setting process.

~~2.2 3.2~~ 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, 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.

~~2.3~~ ~~3.3~~—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, 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.

~~2.4~~ ~~3.4~~—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, using test data and the results from the Standard Setting process. Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.

~~2.5~~ ~~3.5~~—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, using test data and the results from the Standard Setting process.

~~[3.0 2.0 Other Indicators of Student Performance]~~

~~[3.1 2.1 Other indicators of student performance relative to the state content standards may be considered when determining the placement of students who score at Level I or Level II on a mandated retake of a portion of the DSTP.]~~

~~[3.1.1 2.1.1 Other indicators shall be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee (14 Del. C., § 158). Pursuant to 14, Del. C., § 153 (b) school districts and charter schools shall submit a list of proposed indicators to the Department no later than September 1 of each year.]~~

~~[3.1.1.1 2.1.1.1 Such a list must include a demonstration of how an indicator aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.]~~

~~[3.1.2 2.1.2 [Pursuant to 14 Del. C. § 153 (d) (1)(b), (2)(b), (3)(b), (4)(b) and (5) these indicators of student performance shall be evaluated by an academic review committee composed of educators in the student's district or charter school.]~~

~~[3.1.2.1 2.1.2.1 Such committees 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 and be chaired by the school district's or a charter school's supervisor of curriculum or instruction or designee.]~~

~~[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 I or Level II on a mandated retake of a portion of the DSTP. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 Del. C. 153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 Del. C. 153(a).]~~

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

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

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

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

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

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

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

**4.0 Individual Improvement Plan (IIP)**

~~4.1 Beginning with the Spring 2000 DSTP results, students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.~~

4.1 The following students are required to have an Individual Improvement Plan: Students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

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

~~4.2 4.1-1~~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 4.1-2~~The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

~~4.4 4.1-3~~The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

~~4.5 4.2~~Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the school district's superintendent. ~~Disputes among school and/or district staff concerning a student's IIP shall be settled through the school district's normal procedures for resolving similar internal disagreements [pursuant to 14 Del. C., § 153(d)] 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.

~~**5.0 [Students in Grades 3, 5, and 8 Who are Required to Attend a Summer School Program Pursuant to 14 Del. C. § 153, Summer school programs for students in grades 3.5, and 8 as required pursuant to 14 Del. C. § 153.]**~~

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

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district

of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the parent or guardian of the student another district provides services.

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

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

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

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

6.1.1 Beginning in 2002 for the graduating class of 2004, the **[State 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 **[State 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.

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.

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

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to ~~{3.5 4.0}~~ provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

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

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

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

7.0 ~~2.0~~ 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 ~~2.1~~ Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the ~~[affidavit certification]~~ provided by the Department of Education regarding test security before, during and after test administration.

7.2 ~~2.2~~—Violation of the security or confidentiality of any test required by the *Delaware Code* and the ~~[regulations of the Department of Education Regulations of the Department of Education]~~ shall be prohibited.

7.3 ~~2.3~~—Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. ~~[Conduct that violates the security or confidentiality of a test is defined] [as any departure from the test administration procedures established by the Department of Education] [in 14 Del.C. §170 through §174. Conduct of this nature shall include, without limitation, the following acts and omissions:]~~

~~7.3.1 2.3.1. D duplicating secure examination materials;~~

~~7.3.2 2.3.2 D disclosing the contents of any portion of a secure test;~~

~~7.3.3 2.3.3 P providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;~~

~~7.3.4 2.3.4 C changing or altering a response or~~

~~answer of an examinee to a secure test item or prompt;  
7.3.5 2.3.5 **A** aiding or assisting an examinee  
with a response or answer to a secure test item or  
prompt;~~

~~7.3.6 2.3.6 **E** encouraging or assisting an  
individual to engage in the conduct described above;~~

~~7.3.7 2.3.7 **F** failing to report to an appropriate  
authority that an individual has engaged in conduct  
outlined above.]~~

#### 7.4 Procedures for Reporting Security Breaches

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

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

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

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

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

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

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

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

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

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a

confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

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

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

8.2 Parent/guardian(s) may request to view the test questions and their student's responses. In order to review the DSTP questions and their student's responses parents/guardian(s) 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 parent/guardian(s) may go to the local school district or charter school to view the test responses.

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### Regulatory Implementing Order

#### 515 High School Diplomas and Record of Performance

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 515 High School Diploma and Record of Performance. The regulation is amended by adding a new section 4.0 on granting state high school diplomas to World War II veterans pursuant to 14 *Del. C.* § 159 (a) (b) and (c).

The title of the regulation and section 1.0 has also been amended to reflect the name change from Record of Performance to Certificate of Performance as per 14 *Del. C.* § 152. The reasons for granting the Certificate of Performance are now stated in 14 *Del. C.* § 152 (e) so the local school districts no longer establish their own guidelines

for awarding the Certificate of Performance.

The State Council for Persons with Disabilities and the State Board of Education suggested, for clarity, that Section 1.0 of the regulation should be separated into two parts one for the Diploma and a second part for the Certificate of Performance and this has been done.

Notice of the proposed regulation was published in the News Journal and the Delaware State News July 25, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

## II. Findings of Facts

The Secretary finds that it is necessary to amend these regulations because of changes in the state statutes.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C. Section. 122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions of 14 Del. C. Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in SectionV. below.

## IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the Regulations of the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C. Section. 122, in open session at the said Board's regularly scheduled meeting on August 16, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 16th day of August, 2001.

### DEPARTMENT OF EDUCATION

Valerie A Woodruff, Secretary of Education

Approved this 16<sup>th</sup> day of August, 2001.

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

## 515 High School Diploma and ~~Record~~ Certificate of Performance

~~{1.0 A state sanctioned diploma or certificate of performance will be granted to pupils who meet the state and local school district requirements for graduation pursuant to regulation 511 Credit Requirements for High school Graduation and to 14 Del. C. § 152. It is the responsibility of local school districts to establish guidelines for granting the Record of Performance in lieu of a diploma.}~~

[1.0 A State sanctioned diploma shall be granted to students who meet the state and local district requirements for graduation pursuant to regulation 511 Credit Requirements for High School Graduation and to 14 *Del. C.* §152(b)(c)and(d).

2.0 A State sanctioned certificate of performance will be granted to students who meet the requirements of 14*Del. C.* §152 (e).]

~~{2.0 3.0}~~ Diplomas from one school year ~~cannot~~ shall not be issued after December 31 of the next school year.

~~{3.0 4.0}~~ Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of graduation the diploma or the certificate of performance will be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department of Education in Dover: for a notarized The letter of certification ~~must~~ that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available), and ~~must~~ be notarized.

~~{4.0 5.0}~~ State High School Diploma for World War II veterans pursuant to 14 *Del. C.* § 159 (a) (b) (c)).

~~{4.1 5.1}~~ "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16, 1947 is considered World War II.

~~{4.2 5.2}~~ The Department of Education shall provide a high school diploma to any World War II veteran who:

~~{4.2.1 5.2.1}~~ Left a Delaware high school prior to

graduation in order to serve in the armed forces of the United States.

~~4.2.2~~ 5.2.2) Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,

~~4.2.3~~ 5.2.3) Was discharged from the armed forces under honorable circumstances.

~~4.3~~ 5.3) The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 4.2.1 through 4.2.3.

~~4.4~~ 5.4) Applications for this high school diploma shall be made on forms designated by the Delaware Department of Education and the Delaware Commission of Veterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

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## **Regulatory Implementing Order**

### **701 Unit Count**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks to amend the regulation 701 Unit Count. The sections being amended are 4.1.2, 4.1.6 and 8.0. Section 4.1.2 adds the inclusion of repeating seniors who take three or more courses a day to the unit count. Also added to this section is a reference to the James H Groves In-school Program from 2.4 in regulation 915 James H. Groves High School. Section 4.1.6 adds a reference to the inclusion of students in Alternative programs to the unit count. The amendment to section 8.0 describes the conditions for reinstatement in the Unit Count that are required for a special education student who is disqualified.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 25, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### **II. Findings of Facts**

The Secretary finds that it is necessary to amend this regulation because the repeating seniors, students in the Groves in school credit program and the students in the alternative schools need to be listed in the regulation even though in practice they were being counted and the special education issue required added clarity.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C. Section. 122, the regulation attached hereto as

Exhibit "B" is hereby amended. Pursuant to the provisions of 14 Del. C. Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

#### **IV. Text and Citation**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the Regulations of the Department of Education.

#### **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C. on August 7, 2001. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 7th day of August, 2001.

#### **DEPARTMENT OF EDUCATION**

Valerie A Woodruff, Secretary of Education

#### **701 Unit Count**

##### **1.0 Forms and Record Keeping**

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner, which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, handicapping condition, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide special education students as per Regulation 925, Children with Disabilities.

##### **2.0 Special Situations Regarding Enrollment**

2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple handicaps shall be reported in the category that corresponds to their major handicapping condition.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in Regulation 925, Children with Disabilities.

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

### 3.0 Accounting for Students ~~Not~~ Not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 Reason for absence and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district of such enrollment. The notification shall be by fax with a follow-up letter to the previous district central office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

### 4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same

level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.

~~4.1.2 Advanced placement in college: Students shall be enrolled and attend at least one full credit course in their high school. Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (2.4 in regulation 915 James H. Groves High school) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.~~

4.1.3 Temporary medical problem, which precludes school attendance prior to November 1st.

4.1.4 Supportive ~~home-bound~~ homebound instruction provided by the reporting school.

4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.

~~4.1.6 Alternative Education Program: A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.~~

~~4.1.7~~ 4.1.6 Four-year old "gifted or talented" students recorded in the grade level enrollment group to which they are assigned.

~~4.1.8~~ 4.1.7 All pre-kindergarten students with disabilities shall be counted as full-time special education students.

~~4.1.9~~ 4.1.8 Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

~~4.1.10~~ 4.1.9 Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

~~4.1.11~~ 4.1.10 Full-time Special Education Programs - Students who have been properly diagnosed, placed in a

special program, and receive instruction from a certified special education teacher for at least 12 1/2 hours per week. Special students must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in Regulation 925, Children with Disabilities.

4.1.12 ~~4.1.11~~ Part-time Special Education Programs

- Part-time special education programs include students who receive less than 12-1/2 hours of instruction from a certified special education teacher, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between a regular student in a specified grade and a special student in a specified category.

4.1.12.1 ~~4.1.11.1~~ The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade Learning Disabled student receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ( $11.5/15 = .77$ ) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student ( $.77 + .23 = 1.0$ ).

4.1.13 ~~4.1.12~~ Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.

5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

6.0 Nontraditional High School Schedules: For unit count purposes if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of

300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

6.1 The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student:

Fall Vocational= 300 minutes per week  
 Spring Vocational= 1500 minutes per week  
 $1800 / 2 = 900$  minutes per week

Fall Special Education= 7.5 hours per week  
 Spring Special Education= 17.5 hours per week  
 $= 25.0 / 2 = 12.5$  hours per week

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 using the standard public school procedure: major fraction unit rounding rule in each category or

7.1.2 adding the fractional units in each category and using the major fraction unit rounding rule on the total.

8.0 ~~Unit Adjustments After Audit: If after the units are certified by the Secretary of Education, students are disqualified through the auditing process from the unit count, the units will be recalculated without those students. Other eligible students shall not be substituted for the disqualified students.~~ Unit Adjustments After Audit: If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. An other eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH  
OFFICE OF DRINKING WATER**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(c) (16 Del.C. 122(3)(c))

**Rules and Regulations Governing Public Drinking Water  
Systems**

**Nature of the Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing Public Drinking Water Systems. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 1, Section 122 (3) c.

On June 1, 2001 (Volume 4, Issue 12), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code, Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 5, 2001, or be presented at a public hearing on June 26, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal comments were given and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

**Findings of Fact:**

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing Public Drinking Water Systems are adopted and shall become effective September 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

August 14, 2001  
Vincent P. Meconi, Secretary

**Summary of Evidence  
State of Delaware Rules and Regulations Governing  
Public Drinking Water Systems**

A public hearing were held on June 26, 2001, in room 309 of the Jesse Cooper building in Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed

arsenic rule amendment within Delaware Health and Social Services (DHSS) Rules and Regulations Governing Public Drinking Water Systems. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Edward Hallock, Administrator of the Office of Drinking Water, Division of Public Health, made the agency's presentation. Attendees were encouraged to discuss and ask questions regarding the proposed arsenic rule amendment. Testimony was given at the public hearing; testimony and the DHSS (Agency) responses were as follows:

- **In regards to the five year delay in the proposed arsenic rule, what is going to be the position of the Office of Drinking Water in regards to public notification for systems that would technically be out of compliance?**

**Agency Response:** Although DHSS is lowering the arsenic maximum contaminant level (MCL) standard, water systems will not have to comply with the lower arsenic standard for five years. The effective date of the new arsenic MCL will be five years from the effective date of the final rule.

- **What will be the state's stance if the federal government comes out with a higher MCL standard for arsenic, such as .02 milligrams per liter?**

**Agency Response:** DHSS is confident that the proposed arsenic MCL standard of .01 milligrams per liter minimizes long term exposure from this known carcinogen. If the federal government proposes a higher MCL standard for arsenic, DHSS will review their proposal, but may not raise the state standard as a result. State MCL standards for arsenic may be stricter than federal standards.

- **How many other states, municipalities or jurisdictions have changed their arsenic MCL standard to 10 parts per billion, when Environmental Protection Agency (EPA) hasn't even resolved the issue at the federal level?**

**Agency Response:** We know that other states are considering lower their arsenic MCL standard, but we are not aware of any states that have adopted a final rule to do so.

Even though the EPA has not resolved this at the federal level, the Environmental Health Evaluation branch of the Division of Public Health reviewed the health impact studies that EPA used and deemed the studies valid and recommended lowering the arsenic MCL standard in Delaware.

- **If this arsenic rule will impact just a small group of water suppliers, don't you think there's other carcinogens we need to go after before we lower the arsenic standard and create a financial burden on some small water operators.**

**Agency Response:** According to EPA's analysis for the lower arsenic rule, their best available technology studies indicate that treatment for arsenic is affordable for small water systems. In addition, each system will have five years to line-up funding and/or financing for treatment or to install a new well. The State Drinking Water Revolving Loan Fund will be available for water systems needing financial assistance.

There are other carcinogens that will be addressed, however this hearing and rule proposal involves arsenic.

- **The General Assembly is going to vote on Senate Bill 192, which has an amendment to set the arsenic MCL at 10 parts per billion.**

**Agency Response:** The amendment was Senate Amendment 2, to Senate Bill 192, which was introduced on June 7, 2001. Shortly thereafter, Senate Amendment 2, to Senate Bill 192 was stricken.

- **When you say five years, are you saying you are giving five years time to reduce to 10 parts per billion to meet the new arsenic MCL standard?**

**Agency Response:** Under this rule, water systems will have five years to comply with the new arsenic MCL standard. There is no gradual reduction required during the five-year period.

- **Is the state going to pay for arsenic tests?**

**Agency Response:** Arsenic test costs will be assumed by the state.

- **Will water system operators be required to be certified for arsenic detection?**

**Agency Response:** Water system operators will only need to be certified in arsenic removal, if the water system decides to put in treatment.

There was one grammatical change to the draft regulations. In Section 22.601, the words, "five years from the effective date of the adoption of this rule" were deleted and replaced with the date "September 10, 2006."

The public comment period was open from June 1, 2001 to July 5, 2001.

Verifying documents are attached to the Hearing Officer's record. This regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**SECTION 22.6 INORGANIC AND ORGANIC CHEMICAL REQUIREMENTS**

**22.601 PMCLs AND SMCLs:** The following are the inorganic PMCLs and SMCLs (mg/L - milligrams per liter). Compliance is determined pursuant to Section 22.602.

A. PMCLs	
Substance	MCL
Antimony (Sb)	0.006 mg/L
Arsenic (As)**	0.05 mg/L**
Asbestos	7 MF/L*
Barium (Ba)	2 mg/L
Beryllium (Be)	0.004 mg/L
Cadmium (Cd)	0.005 mg/L
Chromium (Cr)	0.1 mg/L
Cyanide (Cn)	0.2 mg/L
Fluoride (F)	See Section 22.603
Lead (Pb)	0.02 mg/L
Mercury (Hg)	0.002 mg/L
Nickel (Ni)	0.1 mg/L
Nitrate-Nitrogen (NO <sub>3</sub> -N)	10 mg/L (See Section 22.602 I3)
Nitrite-Nitrogen (NO-N)	1 mg/L
Total Nitrate Nitrogen and Nitrite Nitrogen	10 mg/L
Selenium (Se)	0.05 mg/L
Thallium (Tl)	0.002 mg/L
Turbidity	See Section 22.701

\*MFL - million fibers per liter, with fiber length > 10 microns

\*\* Effective ~~five years from the effective date of the adoption of this rule~~ [September 10, 2006], the Arsenic standard for all community and non-transient non-community public water systems shall be 0.01 mg/L.

B. SMCLs	
Substance	MCL
Aluminum	0.05-0.2 mg/L
Chloride (Cl)	250 mg/L
Color	15 color units

Copper (Cu)	1 mg/L
Corrosivity	Noncorrosive (See Section 22.71)
Foaming Agents	0.50 mg/L
Iron (Fe)	0.30 mg/L
Manganese (Mn)	0.05 mg/L
Odor	3 threshold odor number
pH	6.5 - 8.5
Silver	0.1 mg/L
Sulfate (SO <sub>4</sub> )	250 mg/L
Total Dissolved Solids (TDS)	500 mg/L
Zinc (Zn)	5 mg/L

C. The Maximum Contaminant Level Goals (MCLG) for lead and copper are as follows:

Lead	0 mg/L
Copper	1.3 mg/L

**DIVISION OF PUBLIC HEALTH  
OFFICE OF EMERGENCY MEDICAL SERVICES**

Statutory Authority: 16 Delaware Code,  
Section 122 (3)(c) (16 Del.C. 122 (3)(c))

**Trauma System Rules and Regulations**

**Nature of the Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Trauma System Rules and Regulations. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code, Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 97, Section 9706 (g) (2).

On July 1, 2001 (Volume 5, Issue 1), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 31, 2001, or be presented at a public hearing on July 24, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

**Findings of Fact:**

No verbal comments were received during the public hearing and no written comments were received during the official public comment period. The public comment period was open from July 1, 2001 to July 31, 2001. Verifying documents are attached to the Hearing Officer's record. The regulation has been reviewed and approved by the Delaware Attorney General's office.

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware proposed Trauma System Rules And Regulations are adopted and shall become effective September 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

August 9, 2001

Vincent P. Meconi, Secretary

**V. STATE OF DELAWARE TRAUMA CENTER  
STANDARDS**

I. Delaware Adult and Pediatric Trauma Center and Participating Hospital Standards will be those of the current American College of Surgeons' Committee on Trauma Verification/Consultation Program for Hospitals as published in their Resources for Optimal Care of the Injured Patient:1999 (Chapter 23 pages 99-102 and Chapter 10, Table 1, page 40) and subsequent revisions.

A. Delaware may modify existing American College of Surgeons' Committee on Trauma Standards to increase the level of the requirement.

B. Because American College of Surgeons verification is a requirement for designation as a Delaware Trauma Center, no American College of Surgeons Trauma Standard may be modified so as to decrease the level of the requirement.

C. The process for modifying an existing American College of Surgeons Standard is:

1. The Trauma System Committee will discuss and vote to recommend to the Director of the Division of Public Health that a modification be made.

2. If approved by the Director, the existing Delaware Trauma System regulations will be revised following the usual promulgation of regulations procedures of Delaware Health and Social Services and the Division of Public Health.

D. Copies of the American College of Surgeons' Resources for Optimal Care of the Injured Patient:1999 may be obtained by contacting the American College of Surgeons' Publication Orders Department at 633 N. Saint

Clair Street in Chicago, IL, 60611 or by telephone at (312) 202-5000.

1. Additionally, The Office of Emergency Medical Services (Blue Hen Corporate Center Suite 4H, Dover (302) 739-6637) and Division of Public Health Director's Office (Jesse Cooper Building, Dover, (302) 739-4701) will each have a copy of this document available on site for public reference.

2. Each County Library System will also have a copy of this document available for public reference (New Castle County (302) 395-5680, Kent County (302) 698-6440, Sussex County (302) 855-7890).

II. The modifications to the current American College of Surgeons Standards in effect for Delaware Trauma System facilities are:

<u>Regional Trauma Center</u>	<u>Community</u>	<u>Participating</u>
<u>Level 1</u>	<u>Level 2</u>	<u>Trauma Center</u>
<u>Level 1</u>	<u>Level 2</u>	<u>Hospital</u>

CLINICAL CAPABILITIES

1. Trauma surgeons, neurosurgeons, and orthopedic surgeons must be dedicated to one hospital when on call (taking call at only one institution at a time) or there must be a physician on back-up call at each institution he/she is covering.

E

CLINICAL QUALIFICATIONS

1. Trauma surgeons, neurosurgeons, Emergency Medicine department physicians, and orthopedic surgeons must obtain 16 hours of trauma or trauma-related Continuing Medical Education credits per year.

E

2. Emergency Medicine department physicians, orthopedic surgeons, and neurosurgeons taking trauma call must be Board certified or eligible. (NOTE- Non-boarded physicians in these specialty areas who have active privileges at a designated Trauma System facility at the time of promulgation of these revisions will be grandfathered.)

E

III. Designated Trauma System facilities will continue to function in accordance with the Trauma Facility -Division of Public Health Memoranda of Agreement signed upon designation.

E = Essential; D = Desirable; n/a = not applicable

<u>Regional Trauma Center</u>	<u>Community</u>	<u>Participating</u>
<u>Level 1</u>	<u>Level 2</u>	<u>Trauma Center</u>
<u>Level 1</u>	<u>Level 2</u>	<u>Hospital</u>

\* NOTE: E = Essential, D = Desirable, n/a = not applicable

I. Demonstrated Commitment to the Trauma Program by hospital Administration and Medical Staff

E	E	E	D
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(NOTE— Demonstration of hospital commitment will include—

1. Development and adoption of written resolution of support from both the Board of Trustees and the Medical Staff.

2. Establishment of written policies and procedures to provide and maintain the services for Trauma patients as outlined in Delaware's Trauma Center Standards.

3. Demonstrable evidence of budgetary support of the hospital's Trauma Program such as hospital-funded positions for Trauma Director, Nurse Coordinator, Registrar, and/or Trauma Quality Improvement Program personnel.

4. Adherence to State Trauma Registry guidelines for providing hospital Trauma Registry data to the State Trauma Registry for utilization in Trauma System management and Quality Improvement activities.

5. And establishment and maintenance of written transfer procedures and agreements with appropriate Trauma Centers, Speciality Centers, and hospitals, providing for movement of both critical and convalescing patients within the Trauma System. Compliance with these procedures is to be monitored by the Quality Improvement process in each institution. It is the responsibility of each receiving hospital to provide timely feedback to transferring hospitals on the status and outcome of all patients received.)

II. Documentation of EMS Involvement

E	E	E	D
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(NOTE— Active involvement in the Emergency Medical Services System will include—

1. Achievement and maintenance of Designated Paramedic Medical Command Center status.

Additional methods of demonstrating compliance with this standard include—

2. Didactic or clinical participation in Emergency Medical Technician-Basic and/or Paramedic initial and/or continuing educational programs.

3. Membership on such committees as the Delaware Paramedic Advisory Council, Delaware EMS Advisory Committee, or Delaware Volunteer Firemen's Association by hospital personnel.)

III. Hospital Organization

**A. Trauma Service**

E	E	E	n/a
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(NOTE— The Trauma Service is made up of all attending general surgeons who take trauma call. It is established by the Medical Staff and has the responsibility for the coordination of care of injured patients, the training of personnel, and trauma Quality Improvement within the Trauma Center. Privileges for surgeons participating in the Trauma Service are to be determined by the Medical Staff credentialing process. Patients with multiple system or major injury must be evaluated by the Trauma Service with the surgeon responsible for the overall care of each patient clearly identifiable.)

Written protocols and standards of care for the major trauma patient should include definitions of response and turnaround times as well as team participant roles.

In Regional and Community Trauma Centers, requirements for surgeons on the Trauma Service include board certification or eligibility, Advanced Trauma Life Support for Physicians provider certification (current), regular clinical involvement in trauma care, and documentation of annual continuing medical education in trauma care (at least 16 trauma-related Continuing Medical Education hours annually; 24 of these hours every 3 years must be obtained outside the institution).

1. Trauma Service Support Personnel

a. Trauma Coordinator

E	E	E	n/a
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(NOTE—The Trauma Coordinator is fundamental to the development, implementation, and evaluation of the institution's Trauma Program. Working with the Trauma Director, the Trauma Coordinator is responsible for the organization of services and systems necessary for a multidisciplinary approach throughout the continuum of trauma care. The Trauma Coordinator role has the following components: clinical, educational, registry/quality improvement/research, administrative, and liaison.)

Records must be available documenting annual trauma-specific continuing education hours.)

B. Trauma Service Director

E	E	E	n/a
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(NOTE—The Trauma Service Director shall be a board-certified or board-eligible surgeon with demonstrated special competence in trauma care. Through the Quality Improvement process, the director will have responsibility for all trauma patients and administrative authority for the hospital's Trauma Program. The Director is responsible for recommending surgeon appointment to and removal from the Trauma Service, in conjunction with appropriate Medical Staff committees.)

Additional qualifications for the Trauma Service Director include regular involvement in the care of injured patients, participation in trauma-related educational activities such as ATLS and continuing education for hospital physicians, nursing staff, and prehospital providers, and involvement in community or national trauma projects or organizations.)

C. Trauma Multidisciplinary Committee

E	E	E	n/a
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(NOTE—This committee should meet regularly for the purpose of peer review. It should be chaired by the Trauma Director and have representation from all the major services that treat trauma patients, with membership including but not limited to the Trauma Coordinator, neurosurgeon, orthopedic surgeon, emergency medicine physician, and anesthesiologist. The tasks of this committee are to critically review, evaluate, and discuss the quality and appropriateness

of care in cases of adverse outcome (complications and deaths, particularly unexpected deaths), monitor complication trends, identify well-managed cases which can be utilized as teaching cases, and designate focused audits.)

D. Hospital Departments/Divisions/Sections

1. General Surgery

E	E	E	D
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2. Neurologic Surgery

E	E	D	n/a
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3. Orthopedic Surgery

E	E	D	n/a
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4. Emergency Services

E	E	E	E
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5. Anesthesia

E	E	E	n/a
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IV. Clinical Capabilities

A. Specialty Availability

1. In-house 24 hours a day:

a. General Surgery

E	E	D	n/a
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(NOTE—The active involvement of the Trauma Surgeon is crucial to optimal care of the injured patient in all phases of management, including resuscitation, identification and prioritization of injuries, therapeutic decisions, and operative procedures. In Regional facilities the 24-hour in-house availability of the attending Trauma Surgeon is the most direct method for providing this involvement. However, alternative methods for providing immediate availability of the attending surgeon are also acceptable. In hospitals with residency programs, evaluation and treatment may be started by a team of surgeons that will include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. This may allow the attending surgeon to take call from outside the hospital. In this case, local criteria must be established to define conditions requiring the attending Trauma Surgeon's immediate hospital presence. The attending surgeon's participation in major therapeutic decisions, presence in the Emergency Department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness must be monitored by the hospital's Trauma Quality Improvement Program.)

In Trauma Centers without applicable residency programs, local conditions may allow the Trauma Surgeon to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be present in the Emergency Department at the time of arrival of the major trauma patient to supervise resuscitation and major therapeutic decisions, provide operative treatment, and be available to care for trauma patients in the ICU. Compliance

with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

b. Neurologic Surgery

E E D n/a

(NOTE- An attending neurosurgeon must be promptly available and dedicated to the hospital's Trauma Service. The in-house requirement may be fulfilled by an in-house neurosurgeon or surgeon who has special competence, as documented in the credentialing process by the chief of neurosurgery, in the care of patients with neurotrauma and who is capable of initiating measures directed toward stabilization of the patient and determination of diagnosis.)

e. Emergency Medicine

E E E E

(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine chief residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When chief residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available.)

In Community Trauma Centers this requirement may be fulfilled by a physician who is credentialed by the hospital to provide emergency medical services.)

d. Anesthesiology

E E D n/a

(NOTE- Requirements may be fulfilled by anesthesiology chief residents PGY4/CA4 who are capable of assessing emergent conditions of trauma patients and providing any indicated treatment, including initiation of surgical anesthesia. When anesthesiology residents are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.)

In Trauma Centers without anesthesiology residency programs, requirements may be fulfilled when local conditions assure that the staff anesthesiologist will be in the hospital at the time of the patient's arrival. During the interim period prior to the arrival of the staff anesthesiologist, an in-house Certified Registered Nurse Anesthetist (CRNA) capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment will be available. In some hospitals without a CRNA inhouse, local conditions may allow anesthesiologists to be rapidly available on short notice. Under these circumstances, local criteria must be established to allow anesthesiologists to take call from outside the hospital without CRNA availability, but with the clear commitment that anesthesiologists will be immediately available for airway emergencies and operative management. The availability of the anesthesiologist and the absence of delays in airway control or operative anesthesia must be documented by the hospital QI process.)

2. On call and promptly available:

a. Anesthesiology

n/a n/a E D

(NOTE- May be provided by a CRNA under physician supervision. Anesthesia personnel involved in caring for trauma patients must have appropriate educational background and participate in trauma-related continuing educational and QI activities. Prompt response must be monitored by the Trauma QI program.)

b. Cardiac Surgery

E D n/a n/a

e. Cardiology

E E D n/a

d. General Surgery

n/a n/a E D

(NOTE- Communication should be such that the general surgeon will be present in the emergency department at the time of arrival of a major trauma patient. Initial management of major trauma patients should follow a standard trauma treatment protocol adopted by the institution.)

e. Hand Surgery

E D n/a n/a

f. Infectious Disease

E D n/a n/a

g. Internal Medicine

E E E n/a

(NOTE- The patient's primary care physician should be notified at an appropriate time.)

h. Microvascular Surgery (replant/flaps)

E D n/a n/a

i. Neurologic Surgery

n/a n/a D n/a

j. Obstetric/Gynecologic Surgery

E E D n/a

k. Ophthalmic Surgery

E E D n/a

l. Oral/Maxillofacial Surgery

E E n/a n/a

m. Orthopedic Surgery

E E E n/a

n. Pediatric Surgery

E D D n/a

(NOTE- A pediatric surgeon is defined as a surgeon who has been granted privileges by the hospital to provide surgical care for the injured child.)

o. Pediatrics

E E D n/a

(NOTE- The patient's primary care physician should be notified at an appropriate time.)

p. Plastic Surgery

E E D n/a

q. Pulmonary Medicine

E E n/a n/a

r. Radiology

E E E D

s. Thoracic Surgery

E E D n/a

(NOTE- A general Trauma Surgeon is presumed to be qualified and should have privileges to provide thoracic surgical care to patients with thoracic injuries. In facilities where the on-call Trauma Surgeon does not have privileges to provide thoracic surgical care, a board-certified thoracic surgeon should be available.)

t. Urologic Surgery

E E D n/a

(NOTE- All specialists on call will be notified immediately and be promptly available. This availability will be continuously monitored by the Trauma QI Program.

Requirements for all physicians caring for trauma patients include board certification or eligibility, regular participation in trauma-related Continuing Medical Education and QI activities, and experience in the care of trauma patients through education and/or background. Neurosurgeons and orthopedic surgeons who participate on the Trauma Call Roster must have documentation of at least 16 trauma-related CME's annually, one-half of which every 3 years must be obtained outside the institution.)

V. Facilities/Resources/Capabilities

A. Emergency department (ED)

1. Personnel

a.) Designated physician director

E E E D

b.) Physicians with special competence in care of critically injured, physically present in the ED and assigned a designated role as a member of the trauma team

E E E D

(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine senior residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When senior residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available. This requires, at a minimum, 24 hour availability of a physician who is credentialed by the hospital to provide emergency medical services and is either Board Certified in Emergency Medicine or currently certified as an ACLS and ATLS provider. All E.D. physicians caring for trauma patients must have documentation of at least 16 trauma-related CME's annually, one-half of which every 3 years must be obtained outside the institution.)

c.) Nursing personnel with special capability in trauma care who provide continual monitoring of the Trauma patient from hospital arrival to in-house disposition

E E E D

(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for every nurse who cares for critically injured trauma patients. Staffing patterns should be based upon data describing both the Emergency Department and

trauma patient populations in terms of numbers and acuity.)

2. Equipment for resuscitation of patients of all ages shall include, but not be limited to:

a.) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen

E E E E

b.) Pulse oximetry

E E E D

e.) End-tidal CO2 determination

E E E D

d.) Suction devices

E E E E

e.) EKG monitor-defibrillator

E E E E

f.) Apparatus to establish central venous pressure monitoring

E E E D

g.) Standard intravenous fluids and administration devices including large-bore intravenous catheters

E E E E

h.) Sterile surgical sets for

i.) Airway control/criothyrotomy

E E E E

ii.) Thoracotomy

E E E D

iii.) Vascular access

E E E E

iv.) Chest decompression

E E E E

i.) Gastric decompression

E E E E

j.) Drugs necessary for emergency care

E E E E

k.) X-ray availability, 24 hours a day

E E E D

(NOTE- There will be written policies and procedures related to monitoring of trauma patients when they are out of the Emergency Department and availability of emergency equipment in areas such as CT or angiography to which critical trauma patients are transported.)

l.) Two-way communication with vehicles of emergency transport system

E E E E

m.) Skeletal traction devices, including capability for cervical traction

E E E D

n.) Arterial catheters

E E D D

o.) Thermal control equipment

i.) For patient

E E E E

ii.) For blood and fluids

3. Helipad consistent with Delaware Air Medical Regulations

E	E	E	D
---	---	---	---

**B. Operating Suite**

**1. Personnel and operating room**

Operating room adequately staffed in-house and immediately available 24 hours a day

E	E	D	n/a
---	---	---	-----

(NOTE—Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the population in terms of numbers and acuity. Prompt response must be monitored by the Trauma QI program if on-call personnel are utilized in Community Trauma Centers.)

**2. Equipment for all ages shall include, but not be limited to:**

- a.) Cardiopulmonary bypass capability
 

E	D	n/a	n/a
---	---	-----	-----
- b.) Operating microscope
 

E	D	n/a	n/a
---	---	-----	-----
- c.) Thermal control equipment
  - i.) For patient
 

E	E	E	n/a
---	---	---	-----
  - ii.) For blood and fluids
 

E	E	E	n/a
---	---	---	-----
- d.) X-ray capability including c-arm image intensifier available 24 hours a day
 

E	E	D	n/a
---	---	---	-----
- e.) Endoscopes
 

E	E	D	n/a
---	---	---	-----
- f.) Craniotomy instruments
 

E	E	D	n/a
---	---	---	-----
- g.) Equipment appropriate for fixation of long-bone and pelvic fractures
 

E	E	E	n/a
---	---	---	-----

**C. Postanesthetic recovery room (surgical intensive care unit is acceptable)**

**1. Registered nurses and other essential personnel 24 hours a day**

E	E	E	n/a
---	---	---	-----

(NOTE—Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

**2. Equipment for all ages shall include, but not be limited to:**

- a. Capability to continuously monitor temperature, hemodynamics, and gas exchange
 

E	E	E	n/a
---	---	---	-----

b. Equipment for the continuous monitoring of intracranial pressure

E	E	D	n/a
---	---	---	-----

e. Pulse oximetry equipment

E	E	E	n/a
---	---	---	-----

d. End-tidal CO<sub>2</sub> determination

E	E	E	n/a
---	---	---	-----

e. Thermal control

E	E	E	n/a
---	---	---	-----

**D. Intensive care units (ICU's) for trauma patients**

**1. Personnel**

a.) Designated surgical director of trauma patients

E	E	E	n/a
---	---	---	-----

b.) Physician, with privileges in critical care and approved by the trauma director, on duty in ICU 24 hours a day or promptly available to the patient

E	E <sup>†</sup>	D <sup>†</sup>	n/a
---	----------------	----------------	-----

(NOTE—In addition to overall responsibility for patient care by the patient's own surgeon, patients in Regional Levels 1 and 2 and Community Trauma Centers must have in-house physician coverage for intensive care at all times. This coverage may be provided by the patient's primary service or by a physician who is credentialed in critical care by the hospital and the director of the ICU. This coverage for emergencies is not intended to replace the primary surgeon in caring for the patient in the ICU; it is to ensure that the patient's immediate needs will be met while the primary surgeon is being contacted.

The active involvement of the Trauma Surgeon is crucial to optimal care of the injured patient in all phases of management, including resuscitation, identification and prioritization of injuries, therapeutic decisions, and operative procedures. In Regional facilities the 24-hour in-house availability of the attending Trauma Surgeon is the most direct method for providing this involvement. However, alternative methods for providing immediate availability of the attending surgeon are also acceptable. In hospitals with residency programs, evaluation and treatment may be started by a team of surgeons that will include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. This may allow the attending surgeon to take call from outside the hospital. In this case, local criteria must be established to define conditions requiring the attending Trauma Surgeon's immediate hospital presence. The attending surgeon's participation in major therapeutic decisions, presence in the Emergency Department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness must be monitored by the hospital's Trauma Quality Improvement Program.

<sup>†</sup>. In Trauma Centers without applicable residency programs, local conditions may allow the physician to be

rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.

In Community Trauma Centers electing to manage severely injured patients in lieu of transferring them, a method of providing 24 hour physician coverage for ICU patients must be in place and documented through the hospital Trauma Quality Management Program.)

e.) Adequate staffing by nursing personnel with special capability in trauma care

E E E n/a

(NOTE—Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for every nurse who cares for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

2. Equipment for all ages shall include, but not be limited to:

- a.) Cardiopulmonary resuscitation cart  
E E E n/a
- b.) Defibrillator with internal, external paddles  
E E E n/a
- c.) Electrocardiograph machine  
E E E n/a
- d.) Sets of instruments for
  - i.) Tracheal intubation  
E E E n/a
  - ii.) Tracheostomy  
E E E n/a
  - iii.) Thoracostomy  
E E E n/a
  - iv.) Venous cut-down  
E E E n/a
  - v.) Central venous puncture  
E E E n/a
  - vi.) Arterial cannulation  
E E E n/a
  - vii.) Peritoneal lavage  
E E E n/a
- e.) Scale  
E E E n/a
- f.) Volume and pressure cycled ventilators  
E E E n/a
- g.) Vascular and intracranial pressure monitors  
E E E n/a
- h.) Pulse or venous oximeters  
E E E n/a
- i.) Thermodilution cardiac output computers

E E E n/a

j.) Temporary transvenous pacemakers

E E E n/a

k.) Infusion devices

E E E n/a

l.) Blood warmers

E E E n/a

m.) Orthopedic traction devices

E E E n/a

n.) Equipment for rapid warming, cooling of pts

E E E n/a

o.) Adjustable chairs

E E E n/a

3. Support Services

A.) Immediate access to clinical diagnostic services

E E E n/a

(NOTE—Blood gas measurements, hematocrit level, and chest X-ray studies should be available within 30 minutes of request. This capability will be continuously monitored by the QI Program.)

B.) Social Service assistance for trauma patients meeting Regional triage criteria and their families

E E E n/a

~~E. Medical Surgical floors designated to receive trauma patients meeting Regional triage criteria post-ICU~~

E E E n/a

1. Adequate staffing by nursing personnel with special capability in trauma care

E E E n/a

(NOTE—Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

2. Equipment for all ages shall include, but not be limited to:

a.) Airway control and ventilation equipment, including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen

E E E n/a

b.) Suction devices

E E E n/a

c.) EKG monitor-defibrillator

E E E n/a

d.) Apparatus to establish central venous pressure monitoring

E E E n/a

e.) Standard intravenous fluids and administration devices

E E E n/a

f.) Cardiopulmonary resuscitation cart

E	E	E	n/a
g.) Gastric decompression			
E	E	E	n/a
h.) Drugs necessary for emergency care			
E	E	E	n/a

**F. Acute hemodialysis capability**

E	D	D	n/a
---	---	---	-----

**G. Organized burn care**

E	E	E	E
---	---	---	---

1. Physician-directed burn center staffed by nursing personnel trained in burn care and equipped properly for care of the extensively burned patient OR
2. Transfer agreement with recognized burn center

**H. Acute spinal cord/head injury management capability**

E	E	E	E
---	---	---	---

1. In circumstances in which a designated spinal cord injury center exists in the region, early transfer should be initiated in selected patients; transfer agreements should be in effect
2. In circumstances in which a head injury center exists in the region, early transfer should be initiated in selected patients; transfer agreements should be in effect

**I. Critical pediatric trauma care capability**

E	E	E	E
---	---	---	---

1. Trauma Center with Pediatric Commitment OR
2. Written transfer agreement with a tertiary pediatric referral center with critical care capabilities

**J. Radiological special capabilities**

1. In-house radiology technician 24 hrs a day
- |   |   |   |     |
|---|---|---|-----|
| E | E | E | n/a |
|---|---|---|-----|

(NOTE: If this requirement is fulfilled in Community Trauma Centers by technicians not in-house 24 hours a day, quality improvement must verify that the procedure is promptly available.)

**2. Angiography**

E	E	D	n/a
---	---	---	-----

**3. Sonography**

E	E	D	n/a
---	---	---	-----

**4. Nuclear scanning**

E	D	D	n/a
---	---	---	-----

**5. Computed tomography (CT)**

E	E	E	n/a
---	---	---	-----

**6. In-house CT technician 24 hrs a day**

E	E	D	n/a
---	---	---	-----

(NOTE: If this requirement is fulfilled by technicians not in-house 24 hours a day, quality improvement must verify that the procedure is promptly available.)

**7. Neuroradiology**

E	D	D	n/a
---	---	---	-----

(NOTE: Defined as a radiologist credentialed by the institution to interpret radiology studies of the central

nervous system.

There will be written policies and procedures related to monitoring of trauma patients when they are out of the Emergency Department and availability of emergency equipment in areas such as CT or angiography to which critical trauma patients are transported.)

**K. Rehabilitation**

1. Rehabilitation service staffed by personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient

E	E	E	n/a
---	---	---	-----

a. Early referral

E	E	E	n/a
---	---	---	-----

(NOTE: Consultation with appropriate rehabilitative services should be made early in the patient's hospitalization. Patients with rehabilitative needs should have access to early rehabilitative evaluation and bedside therapy during the acute phase of their care. Optimal time for rehabilitation consult is within 72 hours of admission.)

b. Discharge planning

E	E	E	E
---	---	---	---

(NOTE: There must be identifiable evidence of early and adequate discharge planning including assessment of function to assure that all trauma patients have access to the inpatient or outpatient services they require post-acute care discharge.)

2. Full in-house long-term rehabilitation service

E	E	E	E
---	---	---	---

(NOTE: Access to the full range of rehabilitative services must be provided, including physiatrist or physician director of rehabilitative services, nursing care, physical therapy, occupational therapy, speech/language/hearing services, substance abuse rehabilitative counseling/referral, orthotic/prosthetic services, psychological/social/family support services, and age-appropriate rehabilitative capability.)

Records documenting annual continuing education hours must be available for all rehabilitation team members who provide care for trauma patients.

There must be immediate availability of adequate emergency equipment in all rehabilitation areas.)

OR

transfer agreement with a rehabilitation facility for long-term care

(NOTE: Facilities providing in-patient acute rehabilitative care for trauma patients should have current CARF (Committee on Accreditation of Rehabilitation Facilities) certification.)

- L. Clinical laboratory service (available 24 hrs. a day)

1. Standard analyses of blood, urine, and other fluids

E	E	E	E
---	---	---	---

**2. Blood typing and cross matching**

E	E	E	E
---	---	---	---

<b>3. Coagulation studies</b>	E	E	E	D
4. Comprehensive blood bank or access to a community central blood bank and adequate storage facilities	E	E	E	E
5. Blood gases and pH determinations	E	E	E	D
<b>6. Microbiology</b>	E	E	E	D
<b>7. Drug and alcohol screening</b>	E	E	E	D
<b>VI. Quality Improvement</b>				
A. Quality improvement program based on ACS Resources for Optimal Care of the Injured Patient: 1993, Chapter 16 and the State of Delaware Trauma System Quality Management Plan				
	E	E	E	E
<b>B. Trauma registry</b>	E	E	E	E
<b>C. Special audit for all trauma deaths</b>	E	E	E	E
<b>D. Morbidity and mortality review</b>	E	E	E	E
<b>E. Trauma conference, multidisciplinary</b>	E	E	E	D
<b>F. Medical nursing audit, utilization, tissue review</b>	E	E	E	E
<b>G. Review of prehospital trauma care</b>	E	E	E	D
H. Published on-call schedule must be maintained for surgeons, neurosurgeons, orthopaedic surgeons, and other major specialists				
	E	E	E	D
I. Times of and reasons for trauma-related bypass must be documented and reviewed by quality improvement program				
	E	E	E	n/a
<b>K. Quality improvement personnel dedicated to and specific for the trauma program</b>				
	E	E	D	D

#### VII. Outreach Program

Telephone and on-site consultations with physicians of the community and outlying areas	E	E	D	n/a
---	---	---	---	-----

#### VIII. Prevention/Public Education

A. Epidemiology research				
1. Conduct studies in injury control	E	D	D	n/a
2. Research collaboration w/ other institutions				
	E	D	D	D
3. Monitor progress of prevention programs				

	E	D	D	D
<b>4. Consult with qualified researchers on evaluation measures</b>				
	E	D	D	D

(NOTE: An epidemiologist or biostatistician should be available.)

#### B. Surveillance

1. Special ED & field collection projects

	E	D	n/a	n/a
--	---	---	-----	-----

(NOTE: This includes the capability of doing special data collection projects as need is identified, such as monitoring bicycle helmet use in the community.)

2. Expanded trauma registry data

	E	E	E	D
--	---	---	---	---

3. Minimal trauma registry data

	E	E	E	E
--	---	---	---	---

(abbreviated)

#### C. Prevention

1. Designated prevention coordinator

	E	E	D	n/a
--	---	---	---	-----

(NOTE: This activity may be part of the Trauma Coordinator's responsibilities.)

2. Outreach activities, program development

	E	E	D	n/a
--	---	---	---	-----

3. Information resource

	E	E	D	n/a
--	---	---	---	-----

4. Collaboration with existing national, regional, and state programs

	E	E	E	D
--	---	---	---	---

#### IX. Trauma Research Program

(NOTE: A trauma research program should be designed to produce new knowledge applicable to the care of injured patients. This research may be conducted in a number of ways, including traditional laboratory and clinical research, reviews of clinical series, and epidemiological or other studies. Regardless of the approach, the study design must include the development and testing of a clearly defined hypothesis. Consistent publication of articles focused on a clinical problem in peer-reviewed journals is the distinguishing feature of an effective research program. A trauma research program should have an organizational structure that fosters and monitors such ongoing productivity. In addition to the publications mentioned above, presentation of results at local, regional, and national society meetings and ongoing studies approved by local human and animal research review boards are expected from productive programs.)

- A. Organized program with designated director

	E	D	n/a	n/a
--	---	---	-----	-----

- B. Regular meeting of research group

	E	D	n/a	n/a
--	---	---	-----	-----

- C. Evidence of productivity

1. Proposals reviewed by IRB

E      D      n/a      n/a

**2. Presentation at local/regional/national meetings**

E      D      n/a      n/a

**3. Publications in peer-reviewed journals**

E      D      n/a      n/a

**X. Continuing Education**

Formal programs in continuing education provided by hospital for:

- A. Staff physicians
 

E	E	D	n/a
---	---	---	-----
- B. Nurses
 

E	E	E	D
---	---	---	---
- C. Allied health personnel
 

E	E	E	D
---	---	---	---
- D. Community physicians
 

E	E	D	n/a
---	---	---	-----

**XI. Organ Procurement Activity**

E      E      E      E

**XII. Transfer Agreements**

- A. As transferring facility
 

D	E	E	E
---	---	---	---

(NOTE—Written transfer procedures and agreements with appropriate Trauma Centers, Speciality Centers, and hospitals, providing for timely movement of both critical and convalescing patients within the Trauma System, must be established and maintained. Compliance with these procedures is to be monitored by each institution's Quality Improvement process.)

- B. As receiving facility
 

E	E	D	n/a
---	---	---	-----

(NOTE—It is the responsibility of each receiving hospital to provide timely feedback to transferring hospitals on the status and outcome of all patients received.)

**PEDIATRIC TRAUMA STANDARDS**

Adult Trauma Center	Regional	Pediatric			
Community	—with Pediatric	—Trauma Center			
Pediatric	—Commitment	—Level 1	—Level 2		
Trauma				—Center	

- I. Demonstrated Commitment to Trauma Care
  - A. Facility must meet all corresponding Adult Trauma Center Standards
 

Regional	—Regional	Regional	Community
Level 1 or 2	—Level 1	Level 2	

(NOTE—The Pediatric Trauma Standards identify the categories of resources required in facilities which specialize in pediatric trauma care. Reference must be made to the standards for the corresponding Trauma Center level in the Delaware Adult Trauma Center Standards document to determine the specific elements of these categories and whether each is an Essential or a Desirable standard for each level Pediatric Trauma Center.)

**II. Hospital Organization**

- A. Hospital
    - 1. Children's hospital or general hospital with a separate pediatric department
 

—	E	E	E
---	---	---	---
- OR—
- ~~General hospital with an organized pediatric department or service~~

E	—	—	—
---	---	---	---

**B. Trauma Service**

- 1. Pediatric Trauma Service organized and managed by a pediatric surgeon
 

—	E	E	E
---	---	---	---

OR

~~Pediatric Trauma Program administered by a surgeon~~

E	—	—	—
---	---	---	---

(NOTE—The Pediatric Program Director must be board-certified and committed to the care of the injured child, as evidenced by documented experience and annual continuing medical education on pediatric trauma.)

- 2. Pediatric Trauma Coordinator**

—	E	E	E
---	---	---	---

OR

~~Trauma Coordinator~~

E	—	—	—
---	---	---	---

**III. Clinical Capabilities**

- A. In-house 24 hours a day:
  - 1. Pediatric surgeon
 

—	E	E	D
---	---	---	---

OR

~~General surgeon~~

E	—	—	—
---	---	---	---

(NOTE—At Regional Pediatric Trauma Centers a pediatric surgeon credentialed in trauma care will be promptly available. This responsible pediatric surgeon will be present in the operating room for all procedures. A general surgical resident at a minimum PGY4 level may initiate resuscitative care until the attending pediatric surgeon arrives.)

In Trauma Centers utilizing general surgeons to provide pediatric trauma care, the surgeons so credentialed must have special interest in and commitment to care of the injured child, demonstrated by experience and documented

CME.

In Trauma Centers without applicable residency programs, local conditions may allow the Pediatric Trauma Surgeon to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the pediatric surgeon will be present in the Emergency Department at the time of arrival of the major trauma patient to supervise resuscitation and major therapeutic decisions, provide operative treatment, and be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

**2. Pediatric neurosurgeon**

— E E D

OR

**Neurosurgeon**

E — — —

(NOTE—An attending neurosurgeon must be promptly available and dedicated to the hospital's Trauma Service. The in-house requirement may be fulfilled by an in-house neurosurgeon or surgeon who has special competence, as documented in the credentialing process by the chief of neurosurgery, in the care of patients with neurotrauma and who is capable of initiating measures directed toward stabilization of the patient and determination of diagnosis.)

**3. Pediatric Emergency physician**

— E E E

OR

**Emergency physician**

E — — —

(NOTE—In Regional institutions, requirements may be fulfilled by emergency medicine chief residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When chief residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available.)

In Community Trauma Centers this requirement may be fulfilled by a physician who is credentialed by the hospital to provide emergency medical services.)

**4. Pediatric anesthesiologist**

— E E D

OR

**Anesthesiologist**

E — — —

(NOTE—Requirements may be fulfilled by anesthesiology chief residents PGY4/CA4 who are capable of assessing emergent conditions of trauma patients and providing any indicated treatment, including initiation of surgical anesthesia. When anesthesiology residents are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.)

In Trauma Centers without anesthesiology residency programs, requirements may be fulfilled when local conditions assure that the staff anesthesiologist will be in the hospital at the time of the patient's arrival. During the interim period prior to the arrival of the staff anesthesiologist, an in-house Certified Registered Nurse Anesthetist (CRNA) capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment will be available. In some hospitals without a CRNA inhouse, local conditions may allow anesthesiologists to be rapidly available on short notice. Under these circumstances, local criteria must be established to allow anesthesiologists to take call from outside the hospital without CRNA availability, but with the clear commitment that anesthesiologists will be immediately available for airway emergencies and operative management. The availability of the anesthesiologist and the absence of delays in airway control or operative anesthesia must be documented by the hospital QI process.)

**5. Pediatric intensivist**

— E E<sup>+</sup> D<sup>+</sup>

OR

**Surgical Critical Care specialist**

E — — —

(1—In Trauma Centers without applicable residency programs, local conditions may allow the physician to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

In Community Trauma Centers electing to manage severely injured patients in lieu of transferring them, a method of providing 24 hour physician coverage for ICU patients must be in place and documented through the hospital Trauma Quality Management Program.)

**B. On call and promptly available:**

**1. Pediatric surgeon**

— — — E

OR

**General surgeon**

— — — —

(NOTE—Communication should be such that the Pediatric Trauma Surgeon will be present in the emergency department at the time of arrival of a major trauma patient. Initial management of major trauma patients should follow a standard trauma treatment protocol adopted by the institution)

**2. Pediatric anesthesiologist**

— — — E

OR

**Anesthesiologist**

— — — —

(NOTE— May be provided by a CRNA under physician supervision. CRNA's involved in caring for trauma patients must have appropriate educational background and participate in trauma-related continuing educational and QI activities. Prompt response must be monitored by the Trauma QI program.)

**3. Pediatric orthopedist**

— E E E

OR

**Orthopedist**

E — — —

**4. Pediatric radiologist**

— E E E

OR

**Radiologist**

E — — —

**5. Other pediatric surgical specialists**

Ⓓ E E E

**6. Other pediatric medical specialists**

Ⓓ E E E

(NOTE— An on-call schedule designating pediatric surgical and medical specialists must be utilized. Prompt availability of these specialists must be monitored through the Pediatric Trauma QI Program. It is expected that physicians participating on the Pediatric Trauma Call Roster will demonstrate their interest in pediatric trauma care through involvement in Pediatric Trauma QI and educational activities.

In reference to the adult standards for on call physicians, freestanding pediatric facilities may meet the Obstetric/Gynecological Surgery standard through current transfer agreements with an adult Trauma Center as outlined in Section VI. of this document. The requirement for Pediatric Surgery and Pediatrics coverage is Essential for all Pediatric Trauma Centers.)

IV. Facilities/Resources/Capabilities

A. Special equipment necessary for the resuscitation, surgical or nonoperative management, and postoperative or postresuscitative care of infants and children must be immediately available on every hospital unit caring for injured children.

E E E E

**B. Physician and nursing staff who care for pediatric trauma patients throughout their hospitalization must include some pediatric specific hours in their documented annual trauma-related continuing education.**

E E E E

(NOTE— Courses such as Pediatric Advanced Life Support (PALS) and Advanced Pediatric Life Support (APLS) are strongly encouraged for physician and nursing

staff caring for pediatric trauma patients.)

**C. Emergency Department**

1. Pediatric Emergency Department with appropriate personnel, equipment, facilities

— E E E

OR

**Pediatric capabilities in an Emergency equipment and staffed by personnel trained to care for pediatric trauma patients Department with adequate pediatric**

E — — —

2. Nurses who are knowledgeable in the care of pediatric trauma patients

E E E E

**D. Intensive care unit**

1. Pediatric ICU with pediatric surgical, medical, and nursing personnel and equipment needed to care for the injured child

— E E E

OR

**ICU with personnel and equipment appropriate for the care of the injured child**

E — — —

**E. Pediatric perioperative services**

1. Operative and recovery facilities, equipment, and personnel specific to meet the trauma care needs of all ages of pediatric patients.

E E E E

**F. Pediatric medical surgical floor/unit**

1. Identifiable pediatric floor or unit staffed with personnel knowledgeable in the care of pediatric trauma patients.

E E E E

**G. Support services**

1. Psychosocial services providing appropriate support and referrals for injured children and their families.

Ⓓ E E E

2. Rehabilitation and physical medicine services specific to the needs of pediatric trauma patients available for early consult and treatment

Ⓓ E E E

3. Comprehensive pediatric diagnostic and laboratory capabilities including micro-sampling and 24-hour CT scan availability

E E E E

V. Pediatric Trauma Quality Improvement

**A. Identifiable Quality Improvement activities specific to the pediatric trauma patient population.**

E E E E

**B. Documented participation by pediatric trauma physicians in pediatric trauma QI activities.**

E E E E

~~C. Trauma Registry collecting expanded data on pediatric patients, with capability to provide information on the pediatric trauma population, including hospital course and outcome.~~

~~E E E E~~

~~D. Demonstrated institutional commitment to pediatric trauma research, education, and injury prevention~~

~~E E E E~~

#### VI. Transfer Agreements

~~A. Appropriate current transfer agreements must be in place for all pediatric trauma specialty care not provided by each institution, including care for burns, head and spinal cord injuries, obstetrics/gynecologic surgery, critical care, and rehabilitation.~~

### DIVISION OF SOCIAL SERVICES

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

#### Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Delaware's A Better Chance (DABC) initiated proceedings to amend policies related to the Division of Social Services Manual Section 4005.3: Step-Parent Income in the DABC Program. In this change, step-parent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home. 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 February, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

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

#### Findings of Fact:

The Department finds that the proposed changes as set forth in the February, 2001 Register of Regulations should

be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of Delaware's A Better Chance Program relating to step-parent income are adopted and shall be final effective August 10, 2001.

August 14, 2001

Vincent P. Meconi, Secretary

#### 4005.3 Step-Parent Income in the ABC Program

In the ABC Program, a step-parent who resides with his/her step-children is considered responsible for supporting those children. A portion of the step-parent's income is used to determine the step-children's financial eligibility and the amount of assistance the children receive. To determine the amount of the step-parent's income that is deemed to the assistance unit, follow the steps listed below:

NOTE: The assistance unit must include the step-child, the step-child's natural or adoptive parent, and siblings who are also living in the home and who are otherwise eligible.

1. Determine the step-parent's gross income.
2. Deduct \$90.00 from earned income.
3. Deduct the ABC standard of need (See DSSM 4007.2) for the family size that includes the step-parent and those individuals who

- a. live in the step-parent's home
- b. are the step-parent's dependents for income tax purposes
- c. are not members of the ABC assistance unit.

(These individuals cannot include a person who is removed from the ABC unit because he/she failed without good cause to cooperate with DCSE or the First Step Program and is being sanctioned.)

4. Deduct amounts paid by the step-parent to individuals who are not living in the home, but who are claimed as dependents for income tax purposes.
5. Deduct child support or alimony payments made to individuals not living in the home.

The remainder is unearned income used to determine the assistance unit's financial eligibility and grant amount.

#### Summary - Total Income

- \$90.00 from earned income
  - Standard of Need
  - Payments to dependents
- Countable Income

The resources of a step-parent are not considered in determining the financial eligibility of the assistance unit. Resources held jointly by the step-parent and the step-parent's spouse are considered available in their entirety to both partners. If the spouse is a member of the assistance unit, these resources are considered in determining the unit's eligibility.

Step-parent budgeting is only used to determine the

financial eligibility or benefit level of a step-child ~~even if when~~ the step-child's natural parent ~~does not~~ resides in the home. Stepparent income is not used to determine financial eligibility or benefit levels when the step-child's natural parent does not reside in the home.

NOTE: If the step-parent is included as a member of the ABC unit, his/her income is budgeted in accordance with rules governing the income of ABC applicants and recipients.

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## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code Sections 311, 520, 2304(16), and 2312 (18 Del.C. §§311, 520, 2304(16), and 2312)

### **Order**

On October 1, 2000, proposed regulation 81 was published in the Register of Regulations in accordance with 29 *Del. C.* chapters 11 and 101. Additionally, in accordance with 29 *Del. C.* chapter 101, notices of the public hearing were published throughout the state in two newspapers of general circulation at least twenty days prior to the hearing. A public hearing was held on November 15, 2000 before the hearing officer, William E. Molchen, II. Present at the November 15 hearing were numerous individuals representing healthcare providers, the insurance industry, and the trial bar. The record was left open until November 30, 2000, to allow for the submission of additional comments and/or exhibits by interested parties.

### **Summary of the Evidence and the Information Submitted**

The evidence in this matter consisted of the oral testimony of five individuals, Kathy S. Gravell, on behalf of the Department of Insurance; Joseph W. Weik, representing the Delaware State Bar Association's Section on Worker's Compensation; Lars Kristiansen, Director of Legislative Affairs for Nationwide Insurance; Bryan Cochran, Legislative Liaison and Claims Attorney for State Farm Insurance Company; and W. Christopher Componovo, representing the Delaware Trial Lawyers Association. Written comments were received from Nationwide Insurance, State Farm Insurance, Campbell Consulting, Inc. on behalf of Coventry Health Care, and Reed & Smith, LLP on behalf of the Health Insurance Association of America. There was support expressed by those who testified at the hearing for the notion of setting a bright-line standard for the timely payment of settled claims and final judgments. As stated in the proposed regulation, the focus is on the payment

of claims upon which there are agreements or court orders as to liability and the amount of money to be paid thereon. Criticisms of the proposed Regulation included, but were not limited to: difficulty in determining when a settlement has occurred or liability is reasonably clear (citing examples of settlements with minors and certain types of fatality claims where a search has to be made for beneficiaries), a failure to include a definition of "bad faith" in the regulation, reconciliation with the provisions of Regulation 80, and that the general business practice standard of three failures to pay claims during any thirty-six (36) month period is too onerous and unreasonable;

### **Findings of Fact with Respect to the Evidence and Information**

Based upon the evidence received in this matter both oral and written, I find that the failure of insurance companies to timely pay claims settled by mutual agreement and court ordered judgments (whether by verdict, stipulation, unappealed arbitration awards, etc.) constitutes a serious problem that adversely affects consumers. I find that concern over determining when a settlement has occurred is unwarranted. This regulation does not address the routine claims procedures of any insurance company. It relates only to situations where the insurer has agreed to liability and amount or is subject to a final court order to pay a claim. In either case, the claim becomes finite and enforceable. The thirty day time limit in which to pay the claim becomes fixed and the obligation of the insurer to make payment in good faith under 18 *Del. C.* Chapter 23 is clear. If there are questions relating to minors, beneficiaries or other similar circumstances, an insurer has the ability to include such concerns as part of an agreement or may seek appropriate relief in any post-judgment proceeding that may be allowed by the court

Objections based on a failure to define bad faith are not persuasive. The proposed regulation incorporates the good faith standard of 18 *Del.C.* § 2304(16)(f). Additionally, I have concluded that it should be expressly stated that a violation of this regulation only creates a rebuttable presumption which the insurer may address in any hearing required under 18 *Del. C.* §§ 2307, 8.

There are several technical, non-substantive revisions to clarify the proposed regulation that do not require re-publication or re-hearing which I incorporate into the final regulation appended hereto.

### **Decision and Effective Date**

I hereby adopt Regulation 81 as modified by the changes appended hereto to be effective thirty days following final publication in the Register of Regulations.

### Text and Citation

The text of Regulation 81 appears in the Register of Regulations Vol. 4, Issue 4, October 1, 2000 as modified by the changes of authority in Section 1, the further definition of agreement or order in Sections 4 and 5, the clarification of statutory authority to impose penalties under Title 18, Chapter 5 in Section 6, the inclusion of a rebuttable presumption standard in Section 7 and minor semantic changes elsewhere in the regulation.

DATED: August 2001

Donna Lee H. Williams, Insurance Commissioner

### Regulation No. 81 Prompt Payment of Settled Claims

- 1.0 Authority
- 2.0 Scope
- 3.0 Purpose
- 4.0 Prompt Payment
- 5.0 Settlement of Claims
- 6.0 Procedure and Penalties
- 7.0 General Business Practice
- 8.0 Separability
- 9.0 Causes of Action and Defenses
- 10.0 Effective Date

**1.0 Authority.** This regulation is adopted by the Commissioner pursuant to the authority granted by 18 *Del. C.* §§ 311[, 520, 2304(16),] and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 *Del. C.* Chapter 101.

**2.0 Scope.** This regulation will apply to all insurers that settle claims either pursuant to a legal action or otherwise.

**3.0 Purpose.** The purpose of this regulation is to ensure prompt payment of claims pursuant to the settlement of claims by insurance carriers as required by 18 *Del. C.* § 2304(16)(f).

**4.0 Prompt Payment.** For the purpose of this regulation prompt payment is defined as remittance of the check within ~~thirty~~ (30) days from[:] the date of agreement[, memorialized in writing; or] final order by the court[; or unappealed arbitration award.]

**5.0 Settlement of Claims** 5.1 The language in 18 *Del. C.* § 2304 (16)(f) requires good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The aforementioned section also applies in those instances where a case is settled prior to a hearing but pursuant to an action filed in court. Once liability

has been resolved and an amount agreed upon, or ordered by the court[, or awarded by an arbitration panel,] the carrier is required to make prompt payment.

### 6.0 Procedure and Penalties

6.1 In the event that a[n insurance] carrier does not remit prompt payment pursuant to th[e is regulation] ~~settlement of a claim~~ and the Department has determined that ~~the said~~ carrier has done so in bad faith and with such frequency as to indicate a general business practice, the Department shall file an action against the carrier pursuant to the Administrative Procedures Act. The commissioner may take all of the following actions:

6.1.1 Award interest on the amount of the claim from the date the claim was settled or ordered, in an amount equal to the prime rate of interest plus 3%.

6.1.2 Fine the insurer according to the provisions outlined in 18 *Del. C.* § 329[, and impose other such penalties as provided in 18 *Del. C.* § 520.]

6.1.3 Fine any person(s) involved with the claim and/or settlement according to the provisions outline[d] in 18 *Del. C.* § 2308(a)(1).

### 7.0 General Business Practice

7.1 Within a 36 month period, three instances of a carrier's failure to ~~pay a claim or bill for services promptly make prompt payment,~~ as defined in section [24] above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* § 2304 (16)(f).

7.2 The 36 month period established in paragraph [~~a-7.1~~] above shall be measured ~~based upon from~~ the date the amount was agreed upon[, or] ordered by the court[, or awarded by arbitration].

### 8.0 Separability

8.1 If any provision of this Regulation or the application of any such provision to any person or circumstance shall be held invalid the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

**9.0 Causes of Action and Defenses.** This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 *Del. C.* § 2304(16). In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 *Del. C.* § 2304(16).

**10.0 Effective Date.** This regulation shall become effective 30 days after ~~the Commissioner's signature publication in the Delaware Register of Regulations.~~

**DEPARTMENT OF STATE  
OFFICE OF THE STATE BANKING  
COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 **Del.C.** §121(b))

**ORDER ADOPTING AMENDED REGULATIONS**

5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003;  
5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006;  
5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010;  
5.1101etal.0011 and 5.1105.0008

IT IS HEREBY ORDERED, this 1<sup>st</sup> day of August, 2001, that amended regulations 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011 and 5.1105.0008 are adopted as regulations of the State Bank Commissioner. Copies of each of these amended regulations are attached hereto and incorporated herein by reference. Amended regulations 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011 and 5.1105.0008 supersede previous regulations 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011 and 5.1105.0008 respectively. The effective date of amended regulations 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011; and 5.1105.0008 is September 11, 2001. All of these regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code as follows:

1. Notice of the proposed amendments and the text of each of the amended regulations were published in the July 1, 2001 issue of the Delaware Register of Regulations. The Notice also was published in the News Journal and the Delaware State News on June 29, 2001 and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before August 1, 2001, and stated that the proposed amended regulations were available for

inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on August 1, 2001 at 10:00 a.m. in the Office of the State Bank Commissioner; 555 E. Loockerman Street, Suite 210, Dover, Delaware.

2. No comments about the proposed amended regulations were received on or before August 1, 2001.

3. A public hearing was held on August 1, 2001 at 10:00 a.m. regarding each of the proposed amended regulations. The State Bank Commissioner; the Deputy Bank Commissioner for Intergovernmental Affairs; The Deputy Bank Commissioner for Supervisory Affairs; the Bank Franchise Tax Specialist for the Office of the State Bank Commissioner; Calvin Scott, Deputy Attorney General; and the Court Reporter attended the hearing. No other person attended the hearing. The Deputy Bank Commissioner for Intergovernmental Affairs summarized the proposed amended regulations for the record. No other comments were made or received at the hearing on the proposed amended regulations.

4. After review and consideration, the State Bank Commissioner decided to adopt amended regulations 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011 and 5.1105.0008 as proposed.

Robert A. Glen, State Bank Commissioner

**Regulation No.: 5.1101(f).0001**  
~~Proposed~~ **Effective Date: September 11, 2001]**

**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))**

**A. Purpose:** Pursuant to 5 Del. C. §1101(f), 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).

**B. Who May Elect:** A corporation may make the election only if it meets the following two tests:

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.

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. **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.

**C. Where To File:** The original of the election form must be filed with the State Bank Commissioner, 555 E. Lookerman 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.

**D. When To Make The Election:** 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.

**E. Supplemental Reporting Requirements:** Once an election has been made under 5 Del. C. §1101(f) for any Electing Corporation, and so long as the same remains in effect, each Estimated Franchise Tax Report under Regulation 5.1101etal.0003 or 5.1101etal.0010 and each Final Franchise Tax Report under Regulation 5.1101etal.0004 or 5.1101etal.0011 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).

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.

**F. Termination Of Election:** 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 B.1 and B.2 hereof. If either 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 B.2 initially to meet the employment test.

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.

**G. Taxable Year:** 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.
Document Control No.:

\_\_\_\_\_
\_\_\_\_\_
Total 100% Total

Regulation No. 5.1101(f).0001
Proposed Effective Date: September 11, 2001

Election To Be Treated As A Subsidiary Corporation
Under 5 Del. C. §1101(F)

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 B.1 of this regulation).

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

4. Name and Principal Place of Business of Deemed Parent (as defined in Section B.1 of this regulation):

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

5. Ownership of Voting Power of Electing Corporation (See Section B.1 of this regulation):

Table with 4 columns: (A) Class of Voting, (B) Class's Percentage of Corporation's Total Voting Power, (C) Percentage of Class Held by Qualifying Entity, (D) Weighted Voting Power Held by Qualifying Entity.

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? \_\_\_\_\_

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

Regulation 5.1101etal.0002
Proposed Effective Date: September 11, 2001

Instructions for Preparation of Franchise Tax (5 Del. C., Chapter 11)

I. This regulation applies to banking organizations and trust companies, other than resulting branches in this State of outofstate banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0003 and 5.1101etal.0004, respectively. Regulations 5.1101etal.0005,

5.1101etal.0006 and 5.1101etal.0007 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 are applicable to resulting branches in this State of outofstate banks.

## II. Definitions

A. "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.

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;

2. A national bank, including a federal savings bank, with its principal office in this State;

3. 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;

4. 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;

5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

6. 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.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. 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;

3. 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;

4. 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;

5. 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

6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

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

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

F. "Net Operating Income Before Taxes" means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

G. "Out-of-state bank" has the same meaning as in §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.

H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §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.

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

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

## III. Estimated Franchise Tax

A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax:

A. 1. Filing. The estimated franchise tax report shall be

filed with the State Bank Commissioner on the first day of March of the current year.

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 franchise tax report required above in section III. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0003;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any estimated income from an insurance division or subsidiary;

3. Less any deductions set forth in 5 Del. C. §1101;

4. Multiplied by .56 to arrive at estimated taxable income;

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

6. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

8. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

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

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

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

**IV. Final Franchise Tax**

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, 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 each year; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, except as otherwise required by 5 Del. C. §904.

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 franchise tax report required above in subsection IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0004.

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

1. The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary)

3. Less any deduction set forth in 5 Del. C. §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

4. Multiplied by .56 to arrive at "taxable income";

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

6. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

8. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

#### V. Payment of Final Franchise Tax

A. 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.

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

#### VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated 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:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated 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;

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

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

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated 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 tax were the tax shown on the final return of the banking organization or trust company for the preceding taxable year.

#### VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final 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.

#### VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a

"subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or February 15, as applicable.

As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 5.1101(f).0001 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

Document Control No.:

#### **Regulation 5.1101etal.0003**

**~~Proposed~~ Effective Date: September 11, 2001]**

#### **Estimated Franchise Tax Report (5 Del. C., Chapter 11)**

This report shall be completed by any banking organization (other than a resulting branch in this State of an out-of-state bank, as defined in § 1101(a) of Title 5 of the Delaware Code) or trust company with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0002.

\_\_\_\_\_  
Name of Banking Organization or Trust  
Company

\_\_\_\_\_  
Tax Year

\_\_\_\_\_  
Location

\_\_\_\_\_  
Federal Employer  
Identification  
Number

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

Rounded to the  
nearest thousand \$

1. Estimated net operating income before taxes \_\_\_\_\_  
(including income of Electing Corporations)

2. Less:

(a) Adjustment for income from an insurance division  
or subsidiary paid to Delaware Department  
of Insurance \_\_\_\_\_

(b) Adjustment for income from an insurance division  
or subsidiary paid to another state \_\_\_\_\_

3. Subtotal \_\_\_\_\_

4. Less:

(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law. \_\_\_\_\_

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5, Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. \_\_\_\_\_

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of

Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. \_\_\_\_\_

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto. \_\_\_\_\_

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto. \_\_\_\_\_

(f) Gross income from international banking facilities less any attributable expenses or other deductions. \_\_\_\_\_

(g) Interest income from obligations of volunteer fire companies. \_\_\_\_\_

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code. \_\_\_\_\_

5. Total deductions (add lines 4(a)-(h)) \_\_\_\_\_

6. Estimated total income before taxes  
(subtract item 5 from item 3) \_\_\_\_\_

7. Estimated taxable income x .56  
(calculated to nearest dollar)

8. Estimated subtotal annual franchise tax liability  
(before tax credits)

Calculation Table:

First \$20,000,000 of item 7 at 8.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 7 at 6.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 7 at 4.7% \_\_\_\_\_  
Next \$620,000,000 of item 7 at 2.7% \_\_\_\_\_  
Amount of item 7 over \$650,000,000 at 1.7% \_\_\_\_\_

Subtotal \_\_\_\_\_

9. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) \_\_\_\_\_

10. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached



(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5, Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

\_\_\_\_\_

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

\_\_\_\_\_

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

\_\_\_\_\_

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

\_\_\_\_\_

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

\_\_\_\_\_

(g) Interest income from obligations of volunteer fire companies.

\_\_\_\_\_

(h) Any examination fee paid to the Office of the State

Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

\_\_\_\_\_

5. Total deductions (add lines 4(a)-(h)) (Include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

\_\_\_\_\_

6. Total income before taxes (subtract item 5 from item 3)

\_\_\_\_\_

x .56

7. Taxable income (calculated to nearest dollar)

\_\_\_\_\_

8. Subtotal franchise tax liability (before tax credits)

Calculation Table:

First \$20,000,000 of item 7 at 8.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 7 at 6.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 7 at 4.7% \_\_\_\_\_  
Next \$620,000,000 of item 7 at 2.7% \_\_\_\_\_  
Amount of item 7 over \$650,000,000 at 1.7% \_\_\_\_\_

Subtotal \_\_\_\_\_

9. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto)

\_\_\_\_\_

10. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto)

\_\_\_\_\_

11. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements, Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.)

\_\_\_\_\_

12. Total annual franchise tax liability (subtract items 9, 10 & 11 from item 8) \$

\_\_\_\_\_

13. Less: Estimated tax payments

a. June 1 payment \$ \_\_\_\_\_  
b. September 1 payment \_\_\_\_\_  
c. December 1 payment \_\_\_\_\_  
d. Total estimated tax payments (add items 13a, 13b and 13c) \_\_\_\_\_



**IV. Final Franchise Tax**

A. 1.Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;

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 franchise tax report required above in section IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0007.

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

1. The net operating income before taxes of the branch or branches located in Delaware;

2. Less the interest income from obligations of volunteer fire companies;

3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

4. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

5. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

6. The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

**V. Payment of Final Franchise Tax**

A. 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.

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

franchise tax shall be assessed.

**VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment**

A. In the case of any underpayment of estimated franchise tax or installment of estimated franchise 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:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated 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;

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

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

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date 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 tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year.

**VII. Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax**

In the case of a late payment of final 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.

**VIII. Separate Accounting by Delaware Branches**

A. Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:

1. Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 567;

2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Delaware Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.

8. Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory OffBalance Sheet Items Taken Into Account in Determining RiskBased Capital Ratio. These are the credit equivalent amounts of offbalance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees,

standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Delaware Branch.

The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

E. Income of a Delaware Branch.

1. Income from Assets. Income and gain from assets (including fees from offbalance sheet items) attributed to a Delaware branch in accordance with the rules in subsection C above will be attributed to the Delaware branch.

2. Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 1 above will be attributed to the Delaware branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the extent that subsection 1 above requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Delaware Branch.

1. Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.

2. Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch,

some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.

3. Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

Document Control No.:

\_\_\_\_\_

**Regulation No.: 5.1101etal.0006**

**~~Proposed~~ Effective Date: September 11, 2001]**

**Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware (5 Del. C., Chapter 11)**

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State with an estimated tax liability in excess of \$10,000 in any given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0005.

\_\_\_\_\_  
Name of Federal Savings Bank      Tax Year

\_\_\_\_\_  
Location      Federal Employer Identification Number

Rounded to the  
nearest thousand \$

1. Estimated net operating income before taxes \_\_\_\_\_

2. Less: Interest income from obligations of volunteer fire companies \_\_\_\_\_

3. Estimated taxable income before taxes (subtract item 2 from item 1) \_\_\_\_\_

4. Estimated subtotal annual franchise tax liability (before tax credits)

Calculation Table:

First \$20,000,000 of item 3 at 8.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 3 at 6.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 3 at 4.7% \_\_\_\_\_  
Next \$620,000,000 of item 3 at 2.7% \_\_\_\_\_  
Amount of item 3 over \$650,000,000 at 1.7% \_\_\_\_\_

Subtotal \_\_\_\_\_

5. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) \_\_\_\_\_

6. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) \_\_\_\_\_

7. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.) \_\_\_\_\_

8. Estimated total annual franchise tax liability (subtract items 5, 6 and 7 from item 4) \_\_\_\_\_

9. Payment Structure and Dates      \$ Amount

June 1      40% of estimate due \_\_\_\_\_  
September 1      20% of estimate due \_\_\_\_\_  
December 1      20% of estimate due \_\_\_\_\_  
March 1 (of succeeding year) Final payment \_\_\_\_\_

I, the undersigned officer, hereby certify that this 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.

\_\_\_\_\_  
Date      Signature of President,      Title  
Treasurer or Other Proper  
Officer

Print Name Phone No.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print Address

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

Document Control No.:  
\_\_\_\_\_

**Regulation No.: 5.1101etal.0007**  
**[Proposed Effective Date: September 11, 2001]**

**Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware (5 Del. C., Chapter 11)**

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State and submitted to the Office of the State Bank Commissioner on or before January 30. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0005.

\_\_\_\_\_  
Name of Federal Savings Bank Tax Year

\_\_\_\_\_  
Location Federal Employer Identification Number

Rounded to the nearest thousand \$

1. Estimated net operating income before taxes \_\_\_\_\_

2. Less: Interest income from obligations of volunteer fire companies \_\_\_\_\_

3. Estimated taxable income before taxes (subtract item 2 from item 1) \_\_\_\_\_

4. Estimated subtotal annual franchise tax liability (before tax credits)

Calculation Table:

First \$20,000,000 of item 3 at 8.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 3 at 6.7% \_\_\_\_\_  
Next \$ 5,000,000 of item 3 at 4.7% \_\_\_\_\_  
Next \$620,000,000 of item 3 at 2.7% \_\_\_\_\_  
Amount of item 3 over \$650,000,000 at 1.7% \_\_\_\_\_

Subtotal \_\_\_\_\_

5. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) \_\_\_\_\_

6. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) \_\_\_\_\_

7. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.) \_\_\_\_\_

8. Estimated total annual franchise tax liability (subtract items 5, 6 and 7 from item 4) \_\_\_\_\_

9. Less: Estimated tax payments  
a. June 1 payment \$ \_\_\_\_\_  
b. September 1 payment \_\_\_\_\_  
c. December 1 payment \_\_\_\_\_  
d. Total estimated tax payments (add items 9a, 9b and 9c) \_\_\_\_\_

10. March 1 final tax payment (subtract item 9d from item 8) \_\_\_\_\_

11. Additional tax due to underpayment of estimated franchise tax or installment (if applicable) \_\_\_\_\_

12. Penalty for late payment of final franchise tax (if applicable) \_\_\_\_\_

13. Total final tax payment (add items 10, 11 and 12) \$ \_\_\_\_\_

I, the undersigned officer, hereby certify that this 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.

Date \_\_\_\_\_ Signature of President, \_\_\_\_\_ Title \_\_\_\_\_  
Treasurer or Other Proper  
Officer

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

Document Control No.: \_\_\_\_\_

**Regulation No.: 5.1101etal.0009**

~~Proposed~~ **Effective Date: September 11, 2001]**

**Instructions for Preparation of Franchise Tax for  
Resulting Branches in this State of Out-of-state Banks  
(5 Del. C., Chapter 11)**

I. This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0010 and 5.1101etal.0011, respectively.

II. Definitions

A. "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.

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;

2. A national bank, including a federal savings bank, with its principal office in this State;

3. 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;

4. 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;

5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

6. 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.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. 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;

3. 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;

4. 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;

5. 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

6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

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

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

F. "Net Operating Income Before Taxes" means the total net income calculated in accordance with Section IX of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

G. "Out-of-state bank" has the same meaning as in §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.

H. "Resulting branch in this State of an out-of-state bank" has the same meaning as in §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.

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

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

### III. Estimated Franchise Tax

A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed \$10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

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 franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0010;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section IV.C.2. of this Regulation).

3. Adjusted for any estimated income from an insurance division or subsidiary;

4. Less any deductions set forth in 5 Del. C. §1101;

5. Multiplied by .56 to arrive at estimated taxable income;

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

7. The subtotal estimated annual franchise tax shall

be adjusted for tax credits applicable pursuant 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal estimated annual franchise tax shall be adjusted for tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

9. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

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

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

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

### IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year.

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 franchise tax report required above in subsection IV.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0011.

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

1. The net operating income before taxes of the

resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly shortterm applicable federal rates, as determined under §1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelvemonth period preceding the date on which the resulting branch imputed capital addback is being determined.

a) The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.

b) The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section IX.C of this regulation, and (ii) the minimum riskbased capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.

3. Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary)

4. Less any deduction set forth in 5 Del. C. §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

5. Multiplied by .56 to arrive at "taxable income";

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

7. The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 Del.C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

9. The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the

Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

V. Payment of Final Franchise Tax

A. 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.

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

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

A. In the case of any underpayment of estimated franchise tax or installment of estimated 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:

1. The amount of the estimated franchise tax or installment payment which would be required to be made if the estimated 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;

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

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

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated 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 tax were the tax shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.

D. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the addition is

attributable to the difference between the imputed capital addback for the current and preceding income years.

#### VII. Penalty - Late Payment of Final Franchise Tax

In the case of a late payment of final 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.

#### VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed \$10,000, and (b) a report of income for the electing corporation as of

December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable.

As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 5.1101(f).0001 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

#### IX. Separate Accounting by Resulting Branches

A. Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:

1. Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 325;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Resulting Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting

branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.

8. Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the

deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.

E. Income of a Resulting Branch.

1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section IX.C above will be attributed to the resulting branch.

2. Income from Fees. Fee income not attributed to a resulting branch in accordance with 1. above will be attributed to the resulting branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that 1. requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Resulting Branch.

1. Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.

2. Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

3. Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross

income of the resulting branch to gross income of the entire bank.

Document Control No.:

Regulation No.: 5.1101etal.0010
Proposed Effective Date: September 11, 2001

Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-state Banks (5 Del. C., Chapter 11)

This report shall be completed by the resulting branch(es) in this State of an out of state bank with an estimated tax liability in excess of \$10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0009.

Name of Out-of-State Bank Tax Year

Location Federal Employer Identification Number

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

Blank lines for listing corporations.

Rounded to the nearest thousand \$

- 1. Estimated net operating income before taxes...
2. Plus: Resulting branch imputed capital addback...
3. Less: (a) Adjustment for income from an insurance division... (b) Adjustment for income from an insured division...
4. Subtotal

## 5. Less:

(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law. \_\_\_\_\_

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5 of the Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. \_\_\_\_\_

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign bank or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. \_\_\_\_\_

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto. \_\_\_\_\_

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto. \_\_\_\_\_

(f) Gross income from international banking facilities \_\_\_\_\_

less any attributable expenses or other deductions. \_\_\_\_\_

(g) Interest income from obligations of volunteer fire companies. \_\_\_\_\_

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code. \_\_\_\_\_

6. Total deductions (add lines 5(a)-(h)) \_\_\_\_\_

7. Estimated total income before taxes (subtract item 6 from item 4) \_\_\_\_\_

x .56

8. Estimated taxable income (calculated to nearest dollar) \_\_\_\_\_

9. Estimated subtotal annual franchise tax liability (before tax credits) \_\_\_\_\_

## Calculation Table:

First \$20,000,000 of item 8 at 8.7% \_\_\_\_\_

Next \$ 5,000,000 of item 8 at 6.7% \_\_\_\_\_

Next \$ 5,000,000 of item 8 at 4.7% \_\_\_\_\_

Next \$620,000,000 of item 8 at 2.7% \_\_\_\_\_

Amount of item 8 over \$650,000,000 at 1.7% \_\_\_\_\_

Subtotal \_\_\_\_\_

10. Less: Total employment tax credits (calculated in accordance with Regulation No. 51105.0008, completed worksheet attached hereto) \_\_\_\_\_

11. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements) \_\_\_\_\_

12. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold, or assigned to the taxpayer by another person.) \_\_\_\_\_

13. Estimated total annual franchise tax liability (subtract items 10, 11 and 12 from item 9) \$ \_\_\_\_\_

14. Payment structure and dates \$ Amount

June 1 40% of estimate due \_\_\_\_\_

# FINAL REGULATIONS

667

September 120% of estimate due \_\_\_\_\_  
December 120% of estimate due \_\_\_\_\_  
March 1 (of succeeding year)Final payment \_\_\_\_\_

Identification Number

I, the undersigned officer, hereby certify that this 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.

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Signature of President, Treasurer or Other Proper Officer Title

Rounded to the nearest thousand \$

\_\_\_\_\_  
Print Name Phone No.

1. Estimated net operating income before taxes (including income of Electing Corporations) \_\_\_\_\_

2. Plus: Resulting branch imputed capital addback \_\_\_\_\_

3. Less:

(a) Adjustment for income from an insurance division or subsidiary paid to Delaware Department of Insurance (report of income attached hereto). \_\_\_\_\_

(b) Adjustment for income from an insurance division or subsidiary paid to another state (report of income attached hereto). \_\_\_\_\_

4. Subtotal \_\_\_\_\_

5. Less:

(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law. \_\_\_\_\_

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5 of the Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. \_\_\_\_\_

\_\_\_\_\_  
Print Address

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

Document Control No.:

**Regulation No.: 5.1101etal.0011**  
**~~Proposed~~ Effective Date: September 11, 2001]**

## Final Franchise Tax Report for Resulting Branches in this State of Out-of-state Banks (5 Del. C., Chapter 11)

This report shall be completed by all resulting branch(es) in this state of out-of-state banks and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall submit this report to the Office of the State Bank Commissioner on or before February 15. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0009.

\_\_\_\_\_  
Name of Out-of-State Bank Tax Year

\_\_\_\_\_  
Location Federal Employer

## FINAL REGULATIONS

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign bank or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

\_\_\_\_\_

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

\_\_\_\_\_

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

\_\_\_\_\_

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

\_\_\_\_\_

(g) Interest income from obligations of volunteer fire companies.

\_\_\_\_\_

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

\_\_\_\_\_

6. Total deductions (add lines 5(a)-(h)) (Include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction.)

\_\_\_\_\_

7. Total income before taxes  
(subtract item 6 from item 4)

\_\_\_\_\_

x .56

8. Taxable income  
(calculated to nearest dollar)

\_\_\_\_\_

9. Subtotal annual franchise tax liability  
(before tax credits)

\_\_\_\_\_

Calculation Table:

First \$20,000,000 of item 8 at 8.7% \_\_\_\_\_  
 Next \$ 5,000,000 of item 8 at 6.7% \_\_\_\_\_  
 Next \$ 5,000,000 of item 8 at 4.7% \_\_\_\_\_  
 Next \$620,000,000 of item 8 at 2.7% \_\_\_\_\_  
 Amount of item 8 over \$650,000,000 at 1.7% \_\_\_\_\_

Subtotal \_\_\_\_\_

10. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto)

\_\_\_\_\_

11. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto)

\_\_\_\_\_

12. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.)

\_\_\_\_\_

13. Total annual franchise tax liability  
(subtract items 10, 11 and 12 from item 9)\$ \_\_\_\_\_

14. Less: Estimated tax payments

a. June 1 payment\$ \_\_\_\_\_  
 b. September 1 payment \_\_\_\_\_  
 c. December 1 payment \_\_\_\_\_  
 d. Total estimated tax payments  
(add items 14a, 14b and 14c) \_\_\_\_\_

15. March 1 final tax payment  
(subtract item 14d from item 13) \_\_\_\_\_

16. Additional tax due to underpayment of estimated franchise tax or installment (if applicable)

\_\_\_\_\_

17. Penalty for late payment of final franchise tax (if applicable)

\_\_\_\_\_

18. Total final tax payment  
(add items 15, 16 and 17) \$ \_\_\_\_\_

I, the undersigned officer, hereby certify that this 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.

Date \_\_\_\_\_ Signature of President, \_\_\_\_\_ Title \_\_\_\_\_  
 Treasurer or Other Proper Officer

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

Document Control No.: \_\_\_\_\_

**Regulation No.: 5.1105.0008**  
~~Proposed~~ **Effective Date: September 11, 2001]**

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

This regulation provides for the calculation of employment tax credits for the years 1997 through 2006 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.

**I. Definitions**

- A. "Base year" means calendar year 1996.
- B. "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.
- C. "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.
- D. "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.

E. "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.

**II. Employment Tax Credit**

A tax credit for the current tax year shall be allowed against the tax imposed under subsection 1105(a) 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.

**III. New Investment Required**

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.

**IV. Annual Limit On Credit**

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) of Title 5 of the Delaware Code for the current tax year.

**V. Applicable Years**

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, subject to the credit carryover described below.

**VI. Credit Carryover**

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 IV 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.

**VII. Calculation Worksheet**

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.

Document Control No.:

**Employment Tax Credit Calculation Worksheet For Years  
1997 - 2006**

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**

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) \_\_\_\_\_

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER EIGHTEEN**

**RE: DELAWARE SPATIAL DATA I-TEAM**

WHEREAS, data that can be analyzed based on its geographic location - "spatial data" - is essential to planning and operations in many levels of government and in the private sector;

WHEREAS, dependable and accurate spatial data resources are a key component of the planning and management activities called for in the Livable Delaware agenda (Executive Order No. 14);

WHEREAS, accurate, well-coordinated spatial data provides a valuable part of the knowledge infrastructure needed by all levels of government

WHEREAS, spatial data sets can be expensive to produce and they must be well coordinated to maximize their usefulness;

WHEREAS, in 1998, the Delaware General Assembly established a Delaware Geographic Data Committee to help coordinate the development and use of spatial data by state agencies, county and local governments, and the private sector;

WHEREAS, the Delaware Geographic Data Committee, working with the State Mapping Advisory Committee, has developed a coordinated, open community of users of spatial data in Delaware;

WHEREAS, this community includes state agencies, county governments, local governments, the academic community and the private sector;

WHEREAS, the Delaware Geographic Data Committee works closely with the Delaware Spatial Data Clearinghouse, within the University of Delaware, to distribute and share spatial data resources;

WHEREAS, the Federal Office of Management and Budget and the Federal Geographic Data Committee have identified a need for a National Spatial Data Infrastructure (NSDI) at the national level to provide a "data skeleton" on which to organize a wide range of spatial data sets;

WHEREAS, the State of Delaware recognizes the need for Delaware to take part in the NSDI by establishing and maintaining a Delaware Spatial Data Framework;

WHEREAS, the Delaware Geographic Data Committee has approved a Delaware Spatial Data Framework of nine spatial data sets, consisting of Transportation, Streams and Water Bodies, Elevation, Digital Aerial Photos, Governmental Units, Land Use and Land Cover, Tax Maps/Land Parcels, Geographic Names and Geodetic Control Points;

WHEREAS, the Delaware Geographic Data Committee and the State Mapping Advisory Committee have acquired or produced data sets to fill the nine layers of Delaware's approved Framework;

WHEREAS, the Federal Office of Management and Budget has developed a new approach to establishing and maintaining the spatial data layers of the NSDI that depends on state-level Implementation Teams (I-Teams) for leadership and coordination;

WHEREAS, effective I-Teams are made up of all the agencies and entities that produce and distribute spatial data; and

WHEREAS, establishing a Delaware I-Team would allow the state of Delaware to take full advantage of the partnerships, grant funding, and teams developed between all states and federal agencies;

NOW, THEREFORE I, RUTH ANN MINNER, by the authority vested in me as Governor of the State of Delaware, hereby declare and order on this 19<sup>th</sup> day of July, 2001:

1. A "Delaware I-Team" is hereby established, within the Delaware Geographic Data Committee.

2. The Delaware I-Team shall include representatives of the following:

The State Planning Coordinator or his or her designee, who will serve as the chair of the I-Team,

The Secretary of Transportation, or his or her designee,

The Secretary of the Department of Natural Resources and Environmental Control, or his or her designee,

The Chief Information Officer of the State of Delaware, or his or her designee,

The Chair of the State Mapping Advisory Committee,

The Manager of the Delaware Spatial Data Clearinghouse,

The GIS Coordinator for New Castle County,

The GIS Coordinator for Kent County, and

The Director of Mapping and Addressing for Sussex County.

3. The Delaware I-Team shall complete and submit to the Office of the Governor an annual report and maintenance plan for the Delaware Spatial Data Framework.

4. The report and maintenance plan shall include:

The status of the data sets identified as the Delaware Spatial Data Framework,

An assessment of needed improvements to those data sets, and

A plan for funding the acquisition of new data for maintenance of those data sets.

5. The I-Team shall negotiate, wherever possible,

innovative partnerships with federal, state, county and local agencies for acquisition of new data for maintenance of the Framework.

6. The I-Team shall identify and pursue all means to make the data sets of the Framework data available to spatial data users at all levels of government.

Ruth Ann Minner, Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

4. The state of emergency is limited to New Castle County, Delaware.

5. Entities seeking to exceed the hourly driving restrictions imposed by 49 C.F.R. §395.3 under this order are cautioned to carefully follow the restrictions imposed by 49 C.F.R. §390.23 even during an emergency declared by a Governor.

Ruth Ann Minner, Governor

Signed August 14th, 2001, pursuant to Title 20, Section 3102(5) of the Delaware Code.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**DECLARATION OF LIMITED STATE OF  
EMERGENCY IN NEW CASTLE COUNTY,  
DELAWARE**

WHEREAS, the combination of extraordinarily hot weather and substantial rainfall has created a situation in New Castle County that requires unusual efforts to ensure continued electrical power in order to save lives and protect property, public health, and safety; and

WHEREAS this situation constitutes an emergency as defined at 20 Del.C. §3201(2); and

WHEREAS the only current threat to life, property, public health, and safety created by the combination of hot weather and heavy precipitation is the delivery of electrical power;

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY DECLARE UNDER THE POWER VESTED IN ME BY THE DELAWARE CONSTITUTION AND TITLE 20, CHAPTER 31 OF THE DELAWARE CODE:

1. A state of emergency exists in New Castle County, Delaware as of 1:30 p.m. on August 12, 2001.

2. The nature of the emergency is that the combination of extraordinarily hot weather and substantial rainfall has created a situation in New Castle County that requires unusual efforts to ensure continued electrical power in order to save lives and protect property, public health, and safety.

3. The state of emergency is limited to the following purpose: providing entities delivering or maintaining electrical power or the means to deliver electrical power with relief pursuant to 49 C.F.R. §390.23. Such relief includes but is not limited to relief from the hourly driving restrictions imposed by 49 C.F.R. §395.3. No other relief from any state or federal law or regulation is intended by the declaration of this state of emergency.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**TERMINATION OF LIMITED STATE EMERGENCY  
IN NEW CASTLE COUNTY, DELAWARE.**

WHEREAS I have been informed that the emergency I described in my August 12, 2001 Declaration of Limited State of Emergency in New Castle County, Delaware has been dealt with to the extent that the conditions necessitating a state of emergency no longer exist,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY DECLARE UNDER THE POWER VESTED IN ME BY THE DELAWARE CONSTITUTION AND TITLE 20, CHAPTER 31 OF THE DELAWARE CODE:

That the State of Emergency declared on August 12, 2001 at 1:30 p.m. in New Castle County, Delaware is terminated as of 12:30 p.m. on August 13, 2001.

Ruth Ann minner, Governor

**EXECUTIVE DEPARTMENT****DELAWARE ECONOMIC DEVELOPMENT OFFICE**  
**THE DELAWARE ECONOMIC DEVELOPMENT**  
**AUTHORITY****NOTICE OF PUBLIC HEARING ON PROPOSED**  
**AMENDEMENTS TO REGULATION NO. 5 –**  
**PROCEDURES GOVERNING THE DELAWARE**  
**STRATEGIC FUND**

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C., Ch. 101, the Director of the Delaware Economic Development Office, as Chairperson of The Delaware Economic Development Authority, is proposing to adopt an amendment to the existing regulation for the administration and operation of the Delaware Strategic Fund Program established in 29 Del.C. §§ 5027 through 5029, as amended, to reflect certain changes in the practices of The Delaware Economic Development Authority pertaining to the Delaware Strategic Fund Program and changes to the Brownfield Assistance program under that statute that are necessitated by the enactment into law of 73 Delaware Laws, c.183 (July 13, 2001). The proposed amendments add certain new definitions in connection with the Brownfield Assistance Program, incorporate the interagency due diligence that the staff of the Delaware Economic Development Office performs into the description of the evaluation process for assistance, eliminate certain non-profit activities from the list of ineligible projects in certain programs, remove a limitation on the amount of assistance that can be rendered with respect to certain programs and conform the Brownfield Assistance Program terms to those in the recently enacted 29 Del.C. § 5028(c).

The Director of the Delaware Economic Development Office, as the Chairperson of The Delaware Economic Development Authority, or an employee of the Delaware Economic Development Office designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on October 1, 2001 in the conference room of the offices of the Delaware Economic Development Office on the 10<sup>th</sup> floor of the Carvel State Office Building, 820 N. French Street, Wilmington, DE, 19801 from 5:00 PM to 7:00 PM. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Lee K. Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305. Written comments must be received on or before October 1, 2001. Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing Ms. Lee K. Porter at the Dover, Delaware, address of the Delaware Economic Development Office set forth above, or by calling her at

(302) 739-4271.

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**DELAWARE ECONOMIC DEVELOPMENT OFFICE**  
**DELAWARE TOURISM OFFICE****Direct Grants Program**

The public may send comments to the Delaware Tourism Office, Attention Julie Miro Wenger, 99 Kings Highway, Dover, DE 19901 or via email to jumiro@state.de.us

**Program Description**

The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Direct Grants are only toward not-for-profit tourism entities are eligible. All projects must tie in to the State Marketing Plan.

The public may send comments to the Delaware Tourism Office, Attention Julie Miro Wenger, 99 Kings Highway, Dover, DE 19901 or via email to jumiro@state.de.us

**Matching Funds Program****Program Description**

The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Matching Funds Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit matching funds proposals. However, for profit businesses are allowed to participate in partnership programs submitted by notfor-profits. All packaging programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan.

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**DEPARTMENT OF HEALTH AND**  
**SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE**  
**RESIDENTS PROTECTION****Delaware Regulations for the**  
**Delaware Adult Abuse Registry**  
**PUBLIC NOTICE**

Delaware Health and Social Services (DHSS) has

prepared revised draft regulations governing the Delaware Adult Abuse Registry as authorized by Title 11 Del. Code Chapter 85.

These regulations govern the placement upon the registry of persons for whom an allegation of abuse, neglect, mistreatment or financial exploitation has been substantiated. Additionally, the regulations establish the procedures for employers to follow when conducting checks of the registry of potential employees. Lastly, they establish procedures for private individuals to follow when conducting checks of potential employees for services in a private residence.

#### **INVITATION FOR PUBLIC COMMENT**

Second public hearings will be held as follows:

Monday, October 1, 2001, 10:00 AM  
Department of Natural Resources & Environmental  
Control Auditorium  
89 Kings Highway  
Dover

Friday, October 5, 2001, 9:30 AM  
Main Building, Conference Room 301  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

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

Written comments are also invited on these revised draft regulations and should be sent to the following address:

John T. Murray  
Division of Long Term Care Residents Protection  
3 Mill Road  
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing October 5, 2001.

---

#### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

#### **Delaware Regulations for Group Home Facilities for Persons with Aids PUBLIC NOTICE**

Delaware Health & Social Services (DHSS) has prepared revised draft regulations governing Group Home Facilities for Persons with AIDS as authorized by Title 16 **Del. Code** Chapter 11.

These regulations are designed specifically for Group Homes for sixteen (16) or less persons with AIDS and establishes the minimum acceptable level of living, programmatic and licensure standards for such homes.

#### **INVITATION FOR PUBLIC COMMENT**

Second public hearing will be held as follows:

Friday, October 5, 2001, 9:00 AM  
Main Building, Conference Room 301  
Herman Holloway Campus  
Delaware Health and Social Services  
1901 N. DuPont Highway  
New Castle, Delaware

For clarifications or directions, please call Gina Loughery or Joan Reynolds at 302-577-6661.

Written comments are also invited on these revised draft regulations and should be sent to the following address:

Robert Smith  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing.

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#### **DIVISION OF SOCIAL SERVICES PUBLIC NOTICE Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Section 9089 regarding Delaware's A Better Chance (DABC) and/or General Assistance (GA) Food Stamp Households. Summary of change: removes language about shortening of certification periods, which are no longer allowed. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box

906, New Castle, Delaware by September 30, 2001.

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

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**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**

**Delaware Medicaid/Medical Assistance Programs**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the following Medicaid policies related to the disabled children's program. Specifically, 1) changing program name to the Children's Community Alternative Disability Program; 2) revising policy to incorporate the statement of purpose of the program, clarify eligibility criteria, provide caregiver description, list levels of care factors, define specific level of care types, detail medical plan of care and costs determinations, provide cost effectiveness calculation and list options when cost effectiveness exceeds cost of institutional care; and, 3) changing the numbering to incorporate this policy into the Long Term Care policy section of the Division of Social Services Manual.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by September 30, 2001.

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

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR & WASTE MANAGEMENT**  
**Air Quality Management Section**  
**SAN # 2001-14**

**TITLE OF THE REGULATION:**

Regulation No. 24, Section 2, "Definitions"  
Regulation No. 24, Section 26, "Stage IV Vapor Recovery"  
Regulation No. 24, Section 36, "Stage II Vapor Recovery"

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Delaware is not in compliance with the EPA ground-level ozone standard, and must make reductions in volatile organic compound (VOC) emissions, which are a factor in the formation of ground-level ozone. The Department is proposing to revise Regulation No. 24, Section 2, Section 26 and Section 36 because the Department believes that Gasoline Dispensing Facilities within the State may not be achieving the Volatile Organic Compound (VOC) emission reductions that are currently required. Under Regulation No. 24 the control efficiency should be 95%. The Department believes the system components, as well as the testing frequencies are contributing factors to the low VOC emission reductions. The amended regulation establishes (1) requirements for using improved vapor recovery adapters and connections; (2) requirements for annual vapor recovery testing; and (3) minimum requirements applicable to compliance testing companies that perform compliance testing in Delaware.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through October 1, 2001. Interested parties may submit comments in writing during this period to: Deanna Morozowich, Air Quality Management Section, 156 South State Street, Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Monday, September 24, 2001 beginning at 6pm in the Richardson & Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

**PREPARED BY:**

Deanna Morozowich (302)739-4791, August 8, 2001

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**DIVISION OF AIR & WASTE MANAGEMENT**

Air Quality Management Section

303 Transportation Circle  
Dover, DE 19901  
2<sup>nd</sup> Floor Conference Room**TITLE OF THE REGULATION:**REGULATION NO. 41, "LIMITING EMISSIONS OF  
VOLATILE ORGANIC COMPOUNDS FROM  
CONSUMER AND COMMERCIAL PRODUCTS",  
Section 2, "CONSUMER PRODUCTS".

A copy of the proposed Rules and Regulations is available by contacting the Division of Boiler Safety at the above address or by telephoning 302-744-2735. Contact James B. Harlan, Director, for any further information at 302-744-2738.

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

Section 2 of Regulation No. 41 will limit the Volatile Organic Compound (VOC) content (hence, emissions) of certain consumer products. VOC limits are reduced below those now listed in the federal rule (40CFR59, Subpart C) to obtain a VOC emission reduction of one t/d over the federal rule. This regulation is patterned after a similar California rule due to go into effect in 2004. Manufacturers have indicated there will be little difficulty in complying with the new VOC limits. The implementation date of 2005 is meant to give manufacturers sufficient time to reformulate products.

**NOTICE OF PUBLIC COMMENT:**

The public comment period for this proposed regulation will extend through September 30, 2001. Interested parties may submit comments in writing during this period to: Gene Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720 and/or statements and testimony may be presented either orally or in writing at the public hearing to be held Thursday, September 27, 2001 beginning at 6pm in the DNREC auditorium at the Richardson & Robbins Building, 89 Kings Highway, Dover, Delaware.

**PREPARED BY:**

Gene Pettingill (302) 323-4542, August 13, 2001

**DEPARTMENT OF PUBLIC SAFETY****DIVISION OF BOILER SAFETY****Notice**

There is an open meeting scheduled by the Division of Boiler Safety, for comments on the proposed changes in the division's Rules and Regulations. The general public is invited to make comments and suggestions on these changes.

Date: October 3, 2001  
Time: 10:00 am till 12:00 PM  
Location: Public Safety Building**DEPARTMENT OF  
TRANSPORTATION****DIVISION OF PLANNING AND POLICY****State Scenic and Historic Highways Program**

The Delaware Department of Transportation through its Division of Planning and Policy is seeking to develop a State Scenic and Historic Highways Program and has completed a draft Program Guide.

The Federal Highway Administration has a national scenic byways program and Delaware is one of the few states that does not have a companion state level program. During the 2000 legislative session, the General Assembly passed Senate Bill 320 authorizing the Department to develop the State Scenic and Historic Highways Program. The Department will use this program to support county and local government and other agencies and organizations wishing to protect the scenic, historic, natural, and/or archeological resources of statewide or national significance to the extent that a person traveling along the roadway can experience them. This objective will be met through the development of corridor plans that outline the development regulations and transportation program changes needed to preserve the features of a particular roadway.

The draft Program Guide establishes the Program and its guidelines. It provides an understanding of the vision for Delaware's Scenic and Historic Highway Program, and an overview of the designation process, including how you can nominate a roadway. It also provides information on identifying intrinsic qualities (scenic, historic, natural, cultural, recreational, and archeological), preparing corridor plans, and seeking sources of support in implementing these plans.

**Public Comment Period**

As part of the public comment period, the Department is holding three public hearings at the following locations and on the following dates:

Sussex County:

Monday, September 17, 2001

DelDOT South District Office in Georgetown.

The South District Office is located on Route 113.

Kent County:

Tuesday, September 18, 2001

Administration Building in Dover.

The DelDOT Administration Building is located on Route 13, across the street from the Blue Hen Corporate Center. If traveling by Route 1, take Exit 95 and bear right off of the exit ramp, the building will be on your left.

New Castle County:

Thursday, September 20, 2001

DelDOT North District Office in Bear.

The DelDOT North District Office is located on Route 7.

At each of the public hearings Department staff will be available between 4:00 p.m. and 7:00 p.m. to provide information on the Program and draft Program Guide and answer questions. At 6 p.m. Department staff will provide a presentation, that includes an overview of the Program and Program Guide, followed by an opportunity for the public to offer comments and ask questions. IN addition, the Department will be accepting comments on the draft Scenic and Historic Highways Program through September 30, 2001. Comments, as well as any questions or requests for additional information should be directed to:

Joseph Cantalupo, Assistant Director

Division of Planning and Policy

The Delaware Department of Transportation

PO Box 778

Dover, DE 19903

(302) 760-2121 (telephone), (302) 739-2251 (fax)

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## **DELAWARE RIVER BASIN COMMISSION**

**P.O. BOX 7360**

**25 STATE POLICE DRIVE**

**WEST TRENTON, NEW JERSEY 08628-0360**

The **Delaware River Basin Commission** will meet on Thursday, September 13, 2001 at Temple University's Ambler Campus in Ambler, Pennsylvania. For more information contact Pamela M. Bush, Commission Secretary, at (609) 883-9500 ext. 203.

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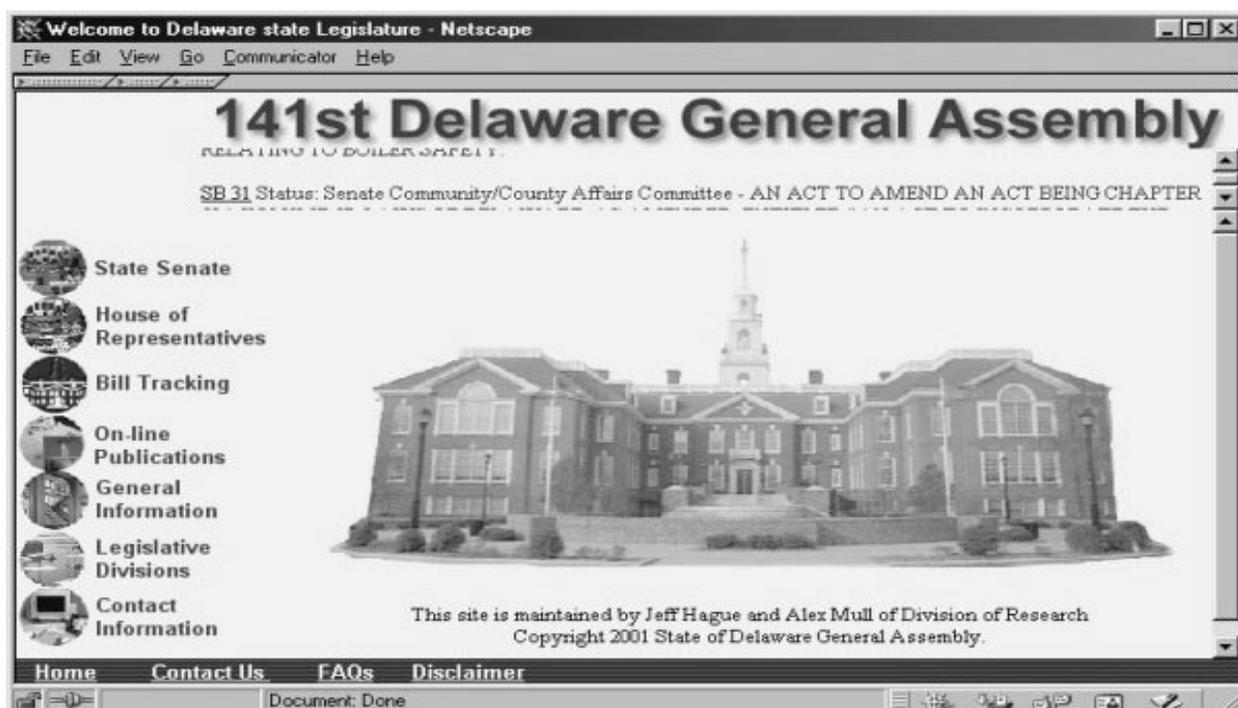
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