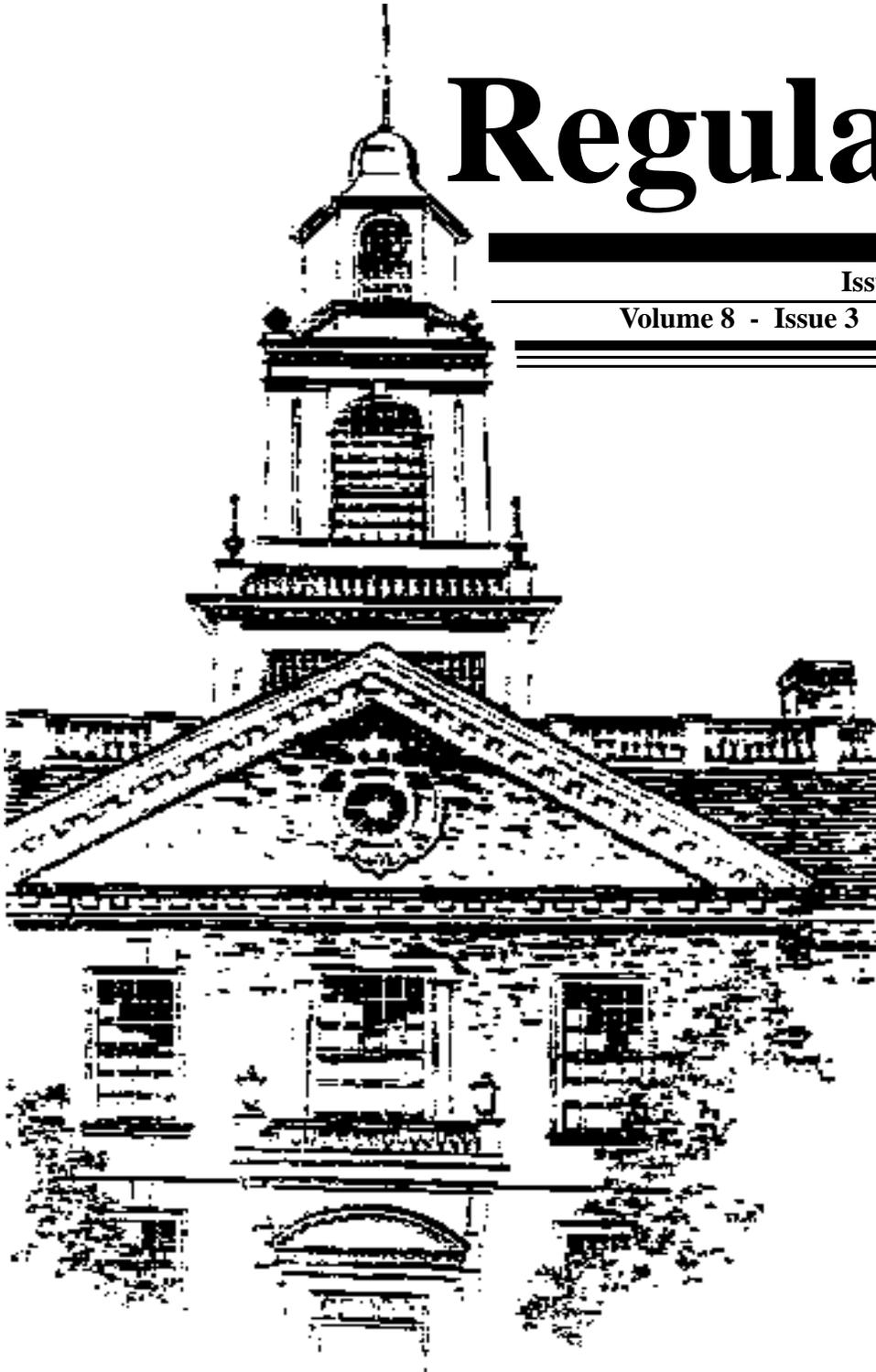


---

---

# Delaware Register of Regulations



---

Issue Date: September 1, 2004

Volume 8 - Issue 3

Pages 366 - 500

---

---

## IN THIS ISSUE:

### Regulations:

- Errata
- Emergency
- Proposed
- Final

### Governor

- Executive Orders
- Appointments
- General Notices
- Calendar of Events &  
Hearing Notices



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

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

367

## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

---

---

### CITATION TO THE DELAWARE REGISTER

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

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

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

---

---

### SUBSCRIPTION INFORMATION

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

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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<br>DATE | CLOSING<br>DATE | CLOSING<br>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 17      | 4:30 P.M.       |

### DIVISION OF RESEARCH STAFF:

**Deborah A. Porter**, Interim Supervisor; **Sandra F. Clark**, Administrative Specialist II; **Kathleen Morris**, Unit Operations Support Specialist; **Jeffrey W. Hague**, Registrar of Regulations; **Steve Engebretsen**, Assistant Registrar; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II; **Rhonda McGuigan**, Administrative Specialist I; **Ruth Ann Melson**, Legislative Librarian; **Lisa Schieffert**, Research Analyst; **Judi Abbott**, Administrative Specialist I; **Alice W. Stark**, Legislative Attorney; **Ted Segletes**, Paralegal; **Deborah J. Messina**, Print Shop Supervisor; **Marvin L. Stayton**, Printer; **Don Sellers**, Printer.

---

---

# TABLE OF CONTENTS

---

369

Cumulative Tables..... 371

---

## EMERGENCY

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF FISH & WILDLIFE

#### Non-Tidal Finfish:

3308 (Formerly NT-7) Fish Stocking Practices..... 374

---

## ERRATA

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

5311 Notification of Time and Place of Hearing. .... 376

---

## PROPOSED

### DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing..... 377  
5300 Board of Massage and Bodywork..... 390

### DEPARTMENT OF EDUCATION

705 Training Camp and Special Duty in the National Guard and/or Reserves..... 396  
706 Credit for Experience for Full Time Service in the Armed Forces..... 397  
718 Health Examinations for School District Employees..... 399  
805 The School Health Tuberculosis (TB) Control Program..... 400  
925 Children With Disabilities..... 402

### PROFESSIONAL STANDARDS BOARD

1554 Standard Certificate Reading Specialist..... 405

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Child Care Subsidy Program: 11002.9 Definitions and Explanation Of Terms; 11004.4.1 Explanation of Certificates; 11006.4.2 Fee Paying Clients ..... 407

### DEPARTMENT OF INSURANCE

504 (Formerly Reg. No. 47) Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants..... 409

---

## FINAL

### DELAWARE STATE FIRE PREVENTION COMMISSION

State Fire Prevention Regulations..... 416

### DEPARTMENT OF EDUCATION

101 Delaware Student Testing Program..... 425  
106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).... 431  
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).... 431  
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).... 431  
501 State Content Standards..... 445

### PROFESSIONAL STANDARDS BOARD

1509 Meritorious New Teacher Candidate Designation..... 446  
1577 (Formerly Reg. 368) Standard Certificate-School Psychologist..... 448

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

463 Licensing and Registration of Operators of Public Water Supply Systems..... 453

---



---

**TABLE OF CONTENTS**


---

**DEPARTMENT OF INSURANCE**

|   |     |
|---|-----|
| 607 (Formerly Reg. No. 37) Defensive Driving Course Discount (Automobiles & Motorcycles)..... | 460 |
| 1501 (Formerly Reg. No. 41) Medicare Supplement Insurance Minimum Standards..                 | 465 |

**DEPARTMENT OF LABOR****COUNCIL ON APPRENTICESHIP & TRAINING**

|   |     |
|---|-----|
| Section 106.5, Standards of Apprenticeship..... | 468 |
|---|-----|

**DEPARTMENT OF STATE****OFFICE OF THE STATE BANKING COMMISSIONER**

|   |     |
|---|-----|
| 708 Establishment of a Branch Office by a Bank or Trust Company.....  | 472 |
| 714 Establishment of a Mobile Branch Office by a Bank or Trust Company.....   | 473 |
| 1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30..... | 474 |

---

**GOVERNOR**

|   |     |
|---|-----|
| Executive Order No. 58, Relating to the Reestablishment of the Juvenile Justice Advisory Group..... | 477 |
| Appointments.....   | 479 |

---

**GENERAL NOTICES****DEPARTMENT OF EDUCATION**

|  |     |
|--|-----|
| Interagency Agreements between the Department of Education and other agencies..... | 482 |
|--|-----|

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF SOIL & WATER CONSERVATION**

|   |     |
|---|-----|
| Delaware Coastal Management Program Policy Update ..... | 497 |
|---|-----|

---

**CALENDAR OF EVENTS/HEARING NOTICES**

|  |     |
|--|-----|
| Dept. Of Administrative Services, Div. of Professional Regulation, Board of Nursing, Notice of Public Hearing.....             | 499 |
| Board of Massage and Bodywork, Notice of Public Hearing.....   | 499 |
| State Board of Education Monthly Meeting Notice ....   | 499 |
| Dept. of Health and Social Services, Div. of Social Services, Child Care Subsidy Program, Notice of Public Comment Period..... | 499 |
| Dept. of Insurance, Notice of Public Hearing.....  | 500 |
| Delaware River Basin Commission, Notice of Public Hearing.....   | 500 |

---

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

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

**DELAWARE STATE FIRE PREVENTION COMMISSION**

State Fire Prevention Regulations..... 8 **DE Reg.** 6 (Prop.)

**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**DIVISION OF PROFESSIONAL REGULATION (TITLE 24 DELAWARE ADMINISTRATIVE CODE)**

2100 Board of Examiners in Optometry..... 8 **DE Reg.** 16 (Prop.)  
 3900 Board of Clinical Social Work Examiners..... 8 **DE Reg.** 218 (Prop.)

**DEPARTMENT OF AGRICULTURE**

Rule 8.3.3.5, Erythropietin..... 8 **DE Reg.** 329 (Final)  
 Standardbred Breeder’s Fund Regulations..... 8 **DE Reg.** 336 (Final)

**DEPARTMENT OF EDUCATION (TITLE 14 DELAWARE ADMINISTRATIVE CODE)**

101 Delaware Student Testing Program..... 8 **DE Reg.** 17 (Prop.)  
 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)..... 8 **DE Reg.** 23 (Prop.)  
 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)..... 8 **DE Reg.** 23 (Prop.)  
 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)..... 8 **DE Reg.** 23 (Prop.)  
 260 General Appeal Procedure for the Child and Adult Care Food Program of the  
 United States Department of Agriculture CACFP/USDA ..... 8 **DE Reg.** 221 (Prop.)  
 501 State Content Standards..... 8 **DE Reg.** 36 (Prop.)  
 618 (Formerly Reg. 879) School Safety Audit..... 8 **DE Reg.** 344 (Final)  
 620 (Formerly Reg. 880) School Crisis Response Plans..... 8 **DE Reg.** 344 (Final)  
 718 Health Examinations for School District Employees..... 8 **DE Reg.** 37 (Prop.)  
 805 The School Health Tuberculosis (TB) Control Program..... 8 **DE Reg.** 38 (Prop.)  
 852 Child Nutrition..... 8 **DE Reg.** 224 (Prop.)  
 885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School  
 System ..... 8 **DE Reg.** 345 (Final)  
 925 Children with Disabilities..... 8 **DE Reg.** 225 (Prop.)  
 1105 School Transportation..... 8 **DE Reg.** 237 (Final)

**PROFESSIONAL STANDARDS BOARD**

323 Certification Computer Science Teacher..... 8 **DE Reg.** 247 (Prop.)  
 331 Certification Family and Consumer Sciences Teacher..... 8 **DE Reg.** 248 (Prop.)  
 368 Certification School Psychologist..... 8 **DE Reg.** 41 (Prop.)  
 1501 Knowledge, Skills And Responsibility Based Supplements For Educators..... 8 **DE Reg.** 73 (Final)  
 1502 Educator Mentoring..... 8 **DE Reg.** 347 (Final)  
 1505 Professional Growth Programs..... 8 **DE Reg.** 78 (Final)  
 1528 Foreign Language Teacher Comprehensive..... 8 **DE Reg.** 80 (Final)  
 1529 Foreign Language Teacher Secondary..... 8 **DE Reg.** 80 (Final)  
 1533 Foreign Language Teacher Elementary..... 8 **DE Reg.** 80 (Final)  
 1537 Bilingual Teacher (Spanish) Secondary..... 8 **DE Reg.** 80 (Final)  
  
 1558 Bilingual Teacher (Spanish) Primary Middle Level..... 8 **DE Reg.** 80 (Final)

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

|  |           |            |
|--|-----------|------------|
| Assisted Living Facilities, Regulations for..... | 8 DE Reg. | 46 (Prop.) |
|  | 8 DE Reg. | 85 (Final) |

**DIVISION OF PUBLIC HEALTH**

|   |           |             |
|---|-----------|-------------|
| Regulations Pertaining to the Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders..... | 8 DE Reg. | 100 (Final) |
| 203 Cancer Treatment Program.....   | 8 DE Reg. | 107 (Final) |
| 463 Licensing and Registration of Operators of Public Water Supply Systems.....                                       | 8 DE Reg. | 47 (Prop.)  |

**DIVISION OF SOCIAL SERVICES****Division of Social Services Manual (DSSM)**

|  |           |             |
|--|-----------|-------------|
| 5311 Notification of Time and Place of Hearing.....          | 8 DE Reg. | 351 (Final) |
| 9068.1 Certification Period Length.....                      | 8 DE Reg. | 113 (Final) |
| 20700.5-20700.5.8, Acquired Brain Injury Waiver Program..... | 8 DE Reg. | 250 (Prop.) |

**DEPARTMENT OF INSURANCE**

|  |           |             |
|--|-----------|-------------|
| 301 Audited Financial Reports.....   | 8 DE Reg. | 252 (Prop.) |
| 606, (Formerly Reg. No. 31) Proof of Automobile Insurance.....                                 | 8 DE Reg. | 55 (Prop.)  |
| 607, (Formerly Reg. No. 37) Defensive Driving Course Discount Automobiles and Motorcycles..... | 8 DE Reg. | 59 (Prop.)  |
| 1404 Long-Term Care Insurance.....   | 8 DE Reg. | 257 (Prop.) |
| 1501, Medicare Supplement Insurance Minimum Standards.....                                     | 8 DE Reg. | 62 (Prop.)  |

**DEPARTMENT OF LABOR****COUNCIL ON APPRENTICESHIP & TRAINING**

|   |           |            |
|---|-----------|------------|
| Section 106.5, Standards of Apprenticeship..... | 8 DE Reg. | 65 (Prop.) |
|---|-----------|------------|

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

|   |           |             |
|---|-----------|-------------|
| Green Energy Fund Program Regulation..... | 8 DE Reg. | 114 (Final) |
|---|-----------|-------------|

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

|   |           |             |
|---|-----------|-------------|
| Hazardous Waste, Regulations Governing.....                     | 8 DE Reg. | 352 (Final) |
| Reporting of a Discharge of a Pollutant or Air Contaminant..... | 8 DE Reg. | 126 (Final) |
| Solid Waste, Regulations Governing.....                         | 8 DE Reg. | 354 (Final) |

**DIVISION OF FISH & WILDLIFE**

|                             |           |             |
|-----------------------------|-----------|-------------|
| 4.0 Seasons & 7.0 Deer..... | 8 DE Reg. | 355 (Final) |
|-----------------------------|-----------|-------------|

**DIVISION OF WATER RESOURCES**

|   |           |             |
|---|-----------|-------------|
| Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Regulations Governing..... | 8 DE Reg. | 283 (Prop.) |
| Surface Water Quality Standards.....  | 8 DE Reg. | 154 (Final) |

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

|  |           |             |
|--|-----------|-------------|
| Board of Examiners of Private Investigators and Private Security Agencies..... | 8 DE Reg. | 325 (Final) |
|--|-----------|-------------|

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

|   |           |             |
|---|-----------|-------------|
| Historic Preservation Tax Credit, Regulations Governing ..... | 8 DE Reg. | 194 (Final) |
|---|-----------|-------------|

**OFFICE OF THE STATE BANKING COMMISSIONER**

|   |           |            |
|---|-----------|------------|
| 708 (Formerly Reg. No. 5.770.0009) Establishment of a Branch Office by a Bank or Trust Company.....   | 8 DE Reg. | 68 (Prop.) |
| 714 Establishment of a Mobile Branch Office by a Bank or Trust Company.....   | 8 DE Reg. | 68 (Prop.) |
| 1113 Election by a Subsidiary Corporation of a Banking Organization of Trust Company to be Taxed in Accordance with Chapter 19 of Title 30..... | 8 DE Reg. | 68 (Prop.) |

---

---

# CUMULATIVE TABLES

---

## GOVERNOR'S OFFICE

|   |   |                |             |
|---|---|----------------|-------------|
| Appointments .....  | 8 | <b>DE Reg.</b> | 361 (Final) |
| Executive Order No. 56, Establishing The Infant Mortality Task Force.....   | 8 | <b>DE Reg.</b> | 199 (Final) |
| Executive Order No .57, Declaring Friday, June 11, 2004 A Legal Holiday In<br>Remembrance Of Former President Reagan..... | 8 | <b>DE Reg.</b> | 360 (Final) |

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 29 Delaware Code,  
Section 10119 (29 Del.C. §10119)

**Adoption of amendment to Non-Tidal Fishing  
Regulations Concerning Snakehead Fishes**

**Order No. 2004-F-0044**

**Authority**

Pursuant to 29 Del.C. subsection 10119, The Department of Natural Resources and Environmental Control is adopting an amendment to Non-Tidal Fishing Regulation 3308 (Formerly Regulation NT-7). Fish Stocking Practices without prior notice or public hearing to prevent the introduction into Delaware waters of a potentially injurious exotic species of fish, the northern snakehead, *Channa argus*. This emergency regulation would add live northern snakehead fish to the list of species for which it is unlawful to transport, purchase, possess or sell in Delaware without the written permission of the Director of the Division of Fish and Wildlife.

**Reason For The Emergency Order:**

Many states have taken action to ban the possession, purchase, sale or stocking of live northern snakehead fish, *Channa argus*, within their boundaries. Two years ago the Maryland Department of Natural Resources attracted national news media attention because of its attempt to eradicate a breeding population of northern snakehead fishes from a pond in Crofton, MD. Since then more than a dozen northern snakeheads have been caught recently in the tidal Potomac River, indicating that this exotic species may already be reproducing in the wild in Maryland and Virginia waters. The northern snakehead is a exotic species native to Southeast Asia with the potential to displace native species and out compete them for food and space because it is an aggressive predator with high reproductive potential and the ability to move from one water body to another by wriggling along wet grass. Some species of snakeheads are known to reach four ft. in length and all are very aggressive predators. The northern snakehead and other snakehead species have been imported to the United States by the aquarium and/or food trade and apparently are regarded by the Asian community in the US as a food fish.

The Pennsylvania Fish and Boat Commission issued a press release on July 23, 2004 that northern snakeheads were

found in Meadow Lake within FDR Park near Philadelphia International Airport. According to Dan Tredinnick, the Press Secretary for the PA Fish and Boat Commission, the Commission has concluded that there is no practical method for eradicating snakeheads in this system of ponds, tidal sloughs and embayments that connect with the Schuylkill and Delaware Rivers. If the species becomes established in the lower Delaware River, it is very likely that it will take up residence in the Delaware portion of the Delaware River as well, where it then could enter the Christiana and Brandywine systems. It is against PA Fish and Boat Commission regulations to possess any variety of live snakeheads. The Maryland Department of Natural Resources recognizes 29 species of snakeheads of the Genera *Channa* and *Parachanna*. Regulations banning these 29 species are scheduled for implementation September 13, 2004. The US Fish and Wildlife Service added 28 species of the snakehead family Channidae to the list of injurious wildlife on October 4, 2002. By this federal action no snakehead fishes may be imported into or transported into or between states and territories in the US (Federal Register vol. 67, No. 193, p. 62193-62204).

If the northern snakehead becomes established in Delaware waters it will have an unknown and possibly injurious impact on native and naturalized biota. By acting quickly, the Delaware Department of Natural Resources and Environmental Control may be able to head off any purposeful or inadvertent releases of northern snakehead fishes in Delaware waters now, that there are known populations living in the wild in the neighboring states of MD, VA and PA that could serve as reservoirs for anyone so inclined.

**Effective Date Of Order**

This Emergency Order shall take effect at 12:01 a.m. on July 28, 2004 and shall remain in effect for 120 days.

**Petition For Recommendations**

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901.

**ORDER**

It is hereby ordered, the 28<sup>th</sup> day of July, 2004 that the above referenced amendment to Non-Tidal Fishing Regulation 3308 (Formerly NT-7). Fishing Stocking Practices, copies of which are hereby attached, are adopted pursuant to 29 Del.C. subsection 10119 and supported by the

evidence contained herein.

John A. Hughes, Secretary  
Department of Natural Resources  
and Environmental Control

**3308 (Formerly NT-7) Fish Stocking Practices  
(Penalty Section 7 Del.C. §1304)**

**1.0 Stocking Fish Practices.**

1.1 It shall be unlawful for any person to stock any species of fish into the non-tidal public waters of this State without the written permission of the Director. This regulation does not prohibit the stocking of private impoundments.

**2.0 Transportation, Possession and Sale.**

2.1 It shall be unlawful for any person to transport, purchase, possess or sell walking catfish (*Clarius batrachus*) or the white amur or grass carp (*Ctenopharyngodon idella*) or live northern snakehead fish (*Channa argus*) without the written permission of the Director.

**3 DE Reg. 289 (8/1/99)**

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

Statutory Authority: 31 Delaware Code, Section  
107 (31 Del.C. §107)

**PUBLIC NOTICE**

**PLEASE NOTE: THE AUGUST 2004 ISSUE CONTAINED AN ERROR IN THE FIRST PARAGRAPH OF REGULATION 5311 (8 DE REG. 351). THE TEXT DID NOT REFLECT THE CHANGE FROM TEN (10) DAYS TO TWELVE (12) DAYS. THE CORRECT VERSION FOLLOWS:**

**5311 Notification of Time and Place of Hearing**

The time, date, and place of the hearing will be arranged so that the hearing is accessible to the appellant. At least ten ~~(10)~~ 12 days before the hearing, advance written notice will be provided by mailing the notice to all parties involved to permit adequate preparation of the case. An appellant may request less notice in order to expedite the scheduling of the hearing. Notices to appellants are sent by certified mail. The notice will:

- 1) Advise the appellant or representative of the name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing;
- 2) Stipulate that the hearing request will be dismissed if the appellant or his/her representative fails to appear for the hearing without good cause (i.e., death in family, personal illness, unexpected emergency);
- 3) Include the hearing procedures and any other information that would provide the appellant with an understanding of the proceedings that would contribute to the effective presentation of the household's case and will include fair hearing summary and documents filed for the hearing;
- 4) Explain that the appellant has the right to bring an attorney or other representative to his/her hearing;
- 5) Explain that the appellant may present any information that (s)he desires at the hearing;
- 6) Explain that the appellant or representative may examine the record prior to the hearing.

**8 DE Reg. 351 (8/1/04)**

---

**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.

---

**DEPARTMENT OF ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION  
BOARD OF NURSING****24 DE Admin. Code 1900**Statutory Authority: 24 Delaware Code,  
Section 1906(1) (24 **Del.C.** §1906(1))**PUBLIC NOTICE**

The Delaware Board of Nursing in accordance with 24 **Del.C.** §1906(1) has proposed to promulgate Rules and Regulations related to Intravascular Therapy by Licensed Nurses.

These proposed rules and regulations which have been developed by the Board define intravascular therapy practices for licensed nurses. Peripheral and central line management, including special procedures such as chemotherapy and epidural catheter management are included.

A public hearing will be held on Wednesday, October 13, 2004 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed new section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to

receive written comments will be October 13, 2004.

The Delaware Board of Nursing proposes to add language regarding Intravascular Therapy to Section 7, Standards of Nursing Practice, within its Rules and Regulations.

**7.0 Standards of Nursing Practice****7.1 Authority**

“**Standards of nursing practice**” means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

**7.2 Purpose**

The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

**7.3 Standards of Practice for the Registered and Licensed Practical Nurse****7.3.1 Standards related to the Registered Nurse.**

**7.3.1.1** The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

**7.3.1.1.1** Collecting objective and subjective data from observations, examinations, interviews

and written records in an accurate and timely manner. The data include but are not limited to:

- 7.3.1.1.1 Biophysical and emotional status and observed changes;
- 7.3.1.1.2 Growth and development;
- 7.3.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;
- 7.3.1.1.4 Family health history;
- 7.3.1.1.5 Information collected by other health team members;
- 7.3.1.1.6 Ability to perform activities of daily living;
- 7.3.1.1.7 Consideration of client's health goals;
- 7.3.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;
- 7.3.1.1.9 Available and accessible human and material resources;
- 7.3.1.1.10 Patterns of coping and interaction.
- 7.3.1.1.2 Sorting, selecting, reporting, and recording the data.
- 7.3.1.1.3 Analyzing data.
- 7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.
- 7.3.1.1.5 Evaluating data.
- 7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.
- 7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:
  - 7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.
  - 7.3.1.3.2 Initiating nursing interventions through
    - 7.3.1.3.2.1 Giving care.
    - 7.3.1.3.2.2 Assisting with care.
    - 7.3.1.3.2.3 Delegating care.
  - 7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.
  - 7.3.1.3.4 Setting realistic and measurable goals for implementation.
  - 7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.
  - 7.3.1.3.6 Supervising the caregiver to whom care is delegated.
- 7.3.1.4 Registered Nurses shall participate in

the implementation of the strategy of care by:

- 7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.
- 7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.
- 7.3.1.4.3 Providing an environment conducive to safety and health.
- 7.3.1.4.4 Documenting nursing interventions and client outcomes.
- 7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.
- 7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.
  - 7.3.1.5.1 Evaluation data shall be appropriately documented; and
    - 7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and
    - 7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.
- 7.4 Standards of Practice for the Licensed Practical Nurse
  - 7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.
    - 7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:
      - 7.4.1.1.1 Sorting, selecting, reporting, and recording the data.
      - 7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:
        - 7.4.1.1.2.1 Biophysical and emotional status and observed changes;
        - 7.4.1.1.2.2 Growth and development;
        - 7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;
        - 7.4.1.1.2.4 Family health history;
        - 7.4.1.1.2.5 Information collected by other health team members;
        - 7.4.1.1.2.6 Ability to perform activities of daily living;
        - 7.4.1.1.2.7 Consideration of client's health goals;
    - 7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.
    - 7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on

assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal

authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

## 7.6 Dispensing

### 7.6.1 Definitions

7.6.1.1 **"Dispensing"** means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medication from bulk to individual doses.

7.6.1.2 **"Prescription label"** - a label affixed to every prescription or drug order which contains the following information at a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient's full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner's directions as found on the prescription order.

7.6.1.2.6 The practitioner's name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 **"Standing order"** - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

### 7.6.2 Authority to Dispense

7.6.2.1 Registered Nurses may assume the

responsibility of dispensing as defined in the Nurse Practice Act.

7.6.2.2 Licensed Practice Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, Section 7.6.2.2.1., 7.6.2.2.2., and 7.6.2.2.3

7.6.2.2.1 Licensed Practical Nurses may provide to a patient pre-packaged medications in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.

7.6.2.2.2 Licensed Practical Nurses, per written order of a physician, dentist, podiatrist, advanced practice nurse, or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.

7.6.2.2.3 Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

### 7.6.3 Standards for Dispensing

7.6.3.1 All licensed nurses engaged in dispensing shall adhere to these standards.

7.6.3.1.1 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.3.1.2 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.3.1.3 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.3.1.4 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.3.1.5 The nurse may not delegate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.3.1.6 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.3.1.7 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.3.1.8 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.3.1.9 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.3.1.10 Record keeping must include the maintenance of the original written prescription

of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.3.1.11 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.3.1.12 Conformance to paragraphs 6 through 11 are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

## 7.7 Delegation

### 7.7.1 Definitions

7.7.1.1 **“Accountability”** - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.1.2 **“Delegation”** - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 **“Supervision”** - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 **“Unlicensed Assistive Personnel”** - Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term “unlicensed assistive personnel” does not include members of the client’s immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 **Del.C.** §1921(a)(4) of the Nurse Practice Act).

### 7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel’s education and training and have opportunity to periodically verify the individual’s ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

### 7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

#### 7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

**1 DE Reg. 1888 (6/1/98)**

**6 DE Reg. 1195 (3/1/03)**

#### 7.8 Intravascular Therapy By Licensed Nurses

Intravascular therapy encompasses several components, some of which require primarily skill proficiency with a minimum of critical judgement. Other

aspects of intravascular therapy require skill proficiency and more importantly a high degree of knowledge, critical judgement and decision making to perform the function safely.

#### 7.8.1 Definition Of Terms

7.8.1.1 Vascular system - is composed of all peripheral and central veins and arteries.

7.8.1.2 Intravascular therapy (IV) - is the broad term including the administration of fluids and medications, blood and blood derivatives into an individual's vascular system.

7.8.1.3 Intravenous fluids - include solutions, vitamins, nutrient preparations, and commercial blood fractions designed to be administered into an individual's vascular system. Whole blood and blood components, which are administered in the same manner, are considered intravenous fluids in this definition.

7.8.1.4 Intravenous and intra-arterial medications - are drugs administered into an individual's vascular system by any one of the following methods:

7.8.1.4.1 By way of infusion diluted in solution or suspended in fluid and administered over a specified time at a specified rate.

7.8.1.4.2 Through an established intra-vascular needle or catheter (referred to as "IV push").

7.8.1.4.3 By venipuncture carried out for the sole purpose of administering the medication. This method is referred to as direct medication injection (direct IV push).

7.8.1.5 Vascular access - Utilization of an established device or the introduction of a needle or catheter into an individual's vascular system.

7.8.1.6 Venipuncture - Introduction of a needle or catheter into an individual's peripheral vein for the purpose(s) of withdrawing blood or establishing an infusion or administering medications.

7.8.1.7 Intravascular therapy maintenance - Monitoring of the therapy for changes in patient's condition, appropriate flow rate, equipment function, the hanging of additional fluid containers and the implementation of site care.

7.8.1.8 Termination of intravascular therapy - Cessation of the therapy either by withdrawing a needle or catheter from an individual's vascular system or by discontinuing the infusion and maintaining the device as a reservoir.

7.8.1.9 Supervision - a registered nurse, licensed physician or dentist is physically present in the unit where the patient is being provided care, or within immediate electronic/telephone contact.

#### 7.8.2 Conditions Of Performing Intravascular Therapy Procedures By Licensed Nurses

7.8.2.1 Intravascular therapy must be authorized by a written order from a state licensed and

authorized prescriber.

7.8.2.2 The performance of any procedures of intravascular therapy by a licensed practical nurse will be done under the supervision of a registered nurse, APN, or person licensed to practice medicine, surgery, or podiatry.

7.8.2.3 Admixed intravascular solutions documented and instituted by one licensed nurse and subsequently interrupted may be re-instituted by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.4 Admixed intravascular solutions documented and prepared by one licensed nurse may be initiated or continued by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.5 Intradermal or topical anesthetics may be used by the RN or LPN when initiating vascular access therapy in various situations or settings, provided there is an authorized prescriber's order and organizational policy/procedure to support use of these medications. All RNs and LPNs must have documented educational preparation according to the employing agency's policies and procedures. Documented evidence must include both theoretical instruction including anatomy and physiology, pharmacology, nursing management and education of patients and demonstration of clinical proficiency in performance of the task.

7.8.3 Functional Scope Of Responsibility For Intravascular Therapy Procedures

7.8.3.1 Registered Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following:

7.8.3.1.1 Assessment of the patient and the prescribed intravascular therapy before, during and after the therapy is carried out.

7.8.3.1.2 Acceptance and confirmation of intravascular therapy order(s).

7.8.3.1.3 Calculation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.4 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.5 Addition of prescribed medications in intravascular solution, labeling and documenting appropriately.

7.8.3.1.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.1.7 Vascular access for establishing an infusion or administering medications.

7.8.3.1.8 Administration of medications by "IV push".

7.8.3.1.9 Intravascular therapy

maintenance.

7.8.3.1.10 Termination of intravascular therapy, including the removal of subclavian and PICC lines.

7.8.3.1.11 Access the vascular system for the purpose of the withdrawal of blood and to monitor the patient's condition before, during, and after the withdrawal of blood.

7.8.3.2 Licensed Practical Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following for peripheral lines:

7.8.3.2.1 Acceptance of intravascular therapy order(s).

7.8.3.2.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.2.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.2.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.2.5 Venipuncture with needle device to establish access to the peripheral vascular system.

7.8.3.2.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.2.7 Intravascular therapy maintenance including the flushing of peripheral lines with Heparin and/or saline solution.

7.8.3.2.8 Termination of peripheral intravascular therapy.

7.8.3.2.9 Performance of venipuncture for the purpose of the withdrawal of blood and to monitor the patient's condition before, during and after the withdrawal of blood.

7.8.3.3 The Licensed Practical Nurse is permitted to perform the following procedures for central lines:

7.8.3.3.1 Acceptance of intravascular therapy order(s).

7.8.3.3.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.3.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.3.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.3.5 Intravascular therapy maintenance, including the flushing of central lines with Heparin and/or saline solution.

7.8.3.3.6 Dressing and tubing changes, including PICC lines.

7.8.3.3.7 Addition of replacement fluids to an existing infusion as prescribed.

#### 7.8.4. Special Intravascular Procedures By Registered Nurses

7.8.4.1 Chemotherapy - Only intravascular routes are addressed in these rules. Review of the Oncology Nursing Society's current guidelines is recommended before the administration of anti-neoplastic agents.

##### 7.8.4.1.1 Definition of Terms

7.8.4.1.1.1 Cancer Chemotherapy - is the broad term including the administration of anti-neoplastic agents into an individual's vascular system.

7.8.4.1.1.2 Anti-neoplastic agents - are those drugs which are administered with the intent to control neoplastic cell growth.

7.8.4.1.2 The Registered Nurse who administers cancer chemotherapy by the intravascular route must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.1.3 The Registered Nurse must have documented evidence of knowledge and skill in the following:

- Pharmacology of anti-neoplastic agents
- Principles of drug handling and preparation
- Principles of administration
- Vascular access
- Side effects of chemotherapy on the nurse, patient, and family

#### 7.8.4.2 Central Venous Access Via Peripheral Veins

##### 7.8.4.2.1 Definition of Terms

7.8.4.2.1.1 Central venous access - is that entry into an individual's vascular system via the insertion of a catheter into a peripheral vein threaded through to the superior vena cava with placement confirmed by x-ray.

7.8.4.2.2 The Registered Nurse who performs central venous access via peripheral veins must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.2.3 Documented evidence must include, but is not limited to, evidence of both theoretical instruction and clinical proficiency in performance of the task.

7.8.4.2.3.1 Theoretical instruction must include, but is not limited to, anatomy and physiology, pharmacology, nursing management, and education of patients as they relate to central venous access via peripheral veins.

7.8.4.2.3.2 A preceptor must supervise the learning experience and must document the Registered Nurse's competency in the performance of the procedure.

#### 7.8.4.3 Pain Management Via Epidural

#### Catheter

7.8.4.3.1 It is within the scope of practice of a Registered Nurse to instill analgesics (opiates)/low dose anesthetics at analgesic levels into an existing catheter under the following conditions/exceptions:

7.8.4.3.1.1 The epidural catheter is in place.

7.8.4.3.1.2 The position of the epidural catheter was verified as correct by a physician at the time of insertion.

7.8.4.3.1.3 Bolus doses and/or continuous infusions, as pre-mixed by anesthesiologists, C.R.N.A.s, or pharmacists, of epidural analgesics/low dose anesthetics at analgesic levels can be administered by the Registered Nurse only after the initial dose has been administered. Changes in medication and/or dosage of the same medication are not defined as the initial dose.

7.8.4.3.1.4 Only analgesics (opiates)/low dose anesthetics at analgesic levels will be administered via this route for acute and chronic pain management.

7.8.4.3.1.5 The Registered Nurse must complete a course that includes, but is not limited to, a) anatomy, physiology, pharmacology, nursing management, assessment, and education of patients as they relate to epidural administration of opiates/low dose anesthetics at analgesic levels; b) a credentialed preceptor must supervise the learning experience and must document the Registered Nurse's clinical competency in the performance of the procedure.

7.8.4.3.1.6 The Registered Nurse may not insert or remove epidural catheters

### **8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware**

#### **8.1 Authority**

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d), 1906(1), 1906(7).

#### **8.2 Purpose**

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

#### **8.3 Scope**

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for

her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

#### 8.4 Definitions

**“Advanced Practice Nurse”** as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

**“Audit”** The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

**“Board”** The Delaware Board of Nursing

**“Certified Nurse Midwife (C.N.M.)”** A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

**“Certified Registered Nurse Anesthetist (C.R.N.A.)”** A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

**“Clinical Nurse Specialist (C.N.S.)”** A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

**“Clinical Nursing Specialty”** a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

#### 3 DE Reg. 1373 (4/1/00)

**“Collaborative Agreement”** Written verification of health care facility approved clinical privileges; or health

care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

**“Guidelines/ Protocols”** Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

**“National Certification”** That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

- American Academy of Nurse Practitioners
- American Nurses Credentialing Center
- American Association of Nurse Anesthetists Council on Certification of Nurse Anesthetists
- American Association of Nurse Anesthetists Council on Recertification of Nurse Anesthetists
- National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
- National Certification Board of Pediatric Nurse Practitioners and Nurses.
- ACNM Certification Council, Inc.

**“Nurse Practitioner (N.P.)”** A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

#### **“Post Basic Program”**

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

**“Scope of Specialized Practice”** That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

**“Supervision”** Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

#### 8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

#### 8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a

multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20).

8.7.16 Inserting and removing epidural catheters after specialized training.

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets

the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del.C. Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as

provided in 24 **Del.C.** §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

**3 DE Reg. 1373 (4/1/00)**

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 **Del.C.** Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery

system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

#### 8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

#### 8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

#### 8.14 Definitions

##### 8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description

of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot

produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 **Del.C.** §2536(C), parenteral medications, medical therapeutics,

devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 **Del.C.** §4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.** §2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

8.21.1 Pursuant to 24 **Del.C.** §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;  
 8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 Del. C. Ch. 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 Del.C. §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the

approval of the Board of Medical Practice.

**4 DE Reg. 296 (8/1/00)**

**5 DE Reg. 1606 (2/1/02)**

**\* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF NURSING RULES AND REGULATIONS ARE AVAILABLE AT:**

*Board of Nursing*

## DIVISION OF PROFESSIONAL REGULATION BOARD OF MASSAGE AND BODYWORK

24 DE Admin. Code 5300

Statutory Authority: 24 Delaware Code,  
 Section 5306(1) (24 Del.C. §5306(1))

### PUBLIC NOTICE

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 5306(1), the Delaware Board of Massage and Bodywork proposes to revise its rules and regulations. The proposed revisions implement changes to the rules necessary to conform to the statutory changes resulting from House Bill 208 as amended by House Amendment No. 1 and Senate Amendment No.1. The revisions clarify the requirements of the change from a 100 hour course to a 300 hour course for certification as a massage technician; the requirements for temporary massage technician certification; incorporate continuing education requirements for renewal of lapsed licenses; and outline the requirements for placing a license on inactive status. In addition, the Board is proposing to revise the rules on continuing education to require that all continuing education must be pre-approved by the Board.

A public hearing will be held on the proposed Rules and Regulations on Thursday, October 7, 2004 at 2:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904.

Any written comments should be submitted to the Board in care of Caitlin Mears, Administrative Specialist, Division of Professional Regulation, at the above address. The final date to submit written comments shall be at the scheduled public hearing.

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

The proposed amendments are set forth below:

### 1.0 Definitions and General Definitions

1.1 The term "500 hours of supervised in-class study" as referenced in 24 Del.C. §5308(a)(1) shall mean that an

instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a curriculum that is substantially the same as referenced in 24 **Del.C.** §5308(a)(1) and which includes hands-on technique and contraindications as they relate to massage and bodywork. More than one school or approved program of massage or bodywork therapy may be attended in order to accumulate the total 500 hour requirement.

1.2 The term a "~~400~~ 300 - hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a ~~400~~ 300 hour course which includes ~~hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork~~ no less than sixty hours of anatomy and physiology, one hundred-forty hours of theory and technique and one hundred hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(a)(1).

1.2.1 The ~~400~~ 300 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Rule ~~1.2-1.4~~. The entire ~~400~~ 300 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

1.3 The term a "200 hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(b) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 200 hour course which includes no less than fifty hours of anatomy and physiology, one hundred-ten hours of theory and technique, twenty- five hours of ethics, law, and contraindications and fifteen hours of elective courses in the field of massage therapy as referenced in 24 **Del.C.** §5309(b).

1.3.4 The "practice of massage and bodywork" includes, but is not limited to, the following modalities:

- Acupressure
- Chair Massage
- Craniosacral Therapy
- Deep Tissue Massage Therapy
- Healing Touch
- Joint Mobilization
- Lymph Drainage Therapy
- Manual Lymphatic Drainage
- Massage Therapy
- Myofascial Release Therapy

- Neuromuscular Therapy
- Orthobionomy
- Process Acupressure
- Reflexology
- Rolfing
- Shiatsu
- Swedish Massage Therapy
- Trager
- Visceral Manipulation

1.4 ~~5~~ The practice of the following modalities does not constitute the "practice of massage and bodywork":

- Alexander Technique
- Aroma therapy
- Feldenkrais
- Hellerwork
- Polarity Therapy
- Reiki
- Shamanic Techniques
- Therapeutic Touch

**3 DE Reg. 1516 (5/1/00)**

**4 DE Reg. 1245 (2/1/01)**

## **2.0 Filing of Application for Licensure as Massage/Bodywork Therapist**

2.1 A person seeking licensure as a massage/bodywork therapist must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of a current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5308(3); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

2.2 In addition to the application and materials described in 2.1 of this Rule, an applicant for licensure as a massage/bodywork therapist shall have (1) each school or approved program of massage or bodywork where the applicant completed the hours of study required by 24 **Del.C.** §5308(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed; and (2) Assessment Systems, Incorporated or its predecessor, submit to the Board verification of the applicant's score on the written examination described in Rule 3.0 herein.

2.3 The Board shall not consider an application for licensure as a massage/bodywork therapist until all items specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

2.3.1 The Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

2.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

2.4 Renewal. Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule ~~6~~ 7.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

**4 DE Reg. 1245 (2/1/01)**

### 3.0 Examination

The Board designates the National Certification Examination administered by the National Certification Board for Therapeutic Massage and Bodywork ("NCBTMB") as the written examination to be taken by all persons applying for licensure as a massage/bodywork therapist. The Board will accept as a passing score on the exam the passing score established by the NCBTMB.

### 4.0 Application for Certification as Massage Technician

4.1 A person seeking certification as a massage technician must submit a completed application on a form prescribed by the Board to the Board office at the Division of Professional Regulation, Dover, Delaware. Each application must be accompanied by (1) a copy of current certificate from a State certified cardiopulmonary resuscitation program as required by 24 **Del.C.** §5309(a)(2); and (2) payment of the application fee established by the Division of Professional Regulation pursuant to 24 **Del.C.** §5311.

4.2 In addition to the application and materials described in 4.1 of this Rule, an applicant for certification as a massage technician shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(a)(1) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.2.1 An applicant for a temporary massage technician certification, in addition to the application and materials described in 4.1 of this Rule, shall have the school or approved program of massage or bodywork therapy where the applicant completed the hours or study required by 24 **Del.C.** §5309(b) submit to the Board an official transcript or official documentation showing dates and total hours attended and a description of the curriculum completed.

4.3 The Board shall not consider an application for certification as a massage technician until all items specified in 4.1 and 4.2 of this Rule are submitted to the Board's office.

4.3.1 The Board may, in its discretion, approve

applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Board, the Board will propose to deny the application.

4.3.2 If an application is complete in terms of required documents, but the candidate has not responded to a Board request for further information, explanation or clarification within 120 days of the Board's request, the Board will vote on the application as it stands.

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule ~~6.0-7.0~~ and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period. Temporary massage technician certificates are valid for no more than one (1) year and may not be renewed or reissued pursuant to the provision of 24 **Del.C.** §5309(b).

**3 DE Reg. 1516 (5/1/00)**

**4 DE Reg. 1245 (2/1/01)**

### 5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician, excluding temporary massage technician certificates, may be reinstated within one (1) year after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation, and submission of documentation demonstrating compliance with the continuing education requirements of Rule 7.0.

**5 DE Reg. 827 (10/01/01)**

### 6.0 Inactive Status

6.1 A licensee asking to have his or her license placed on inactive status must notify the Board of his/her intention to do so in writing prior to the expiration of his/her current license. Holders of temporary massage technician certificates are not eligible for inactive status.

6.2 A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation demonstrating compliance with the continuing education hours required by Rule 7.0.

### 6 7.0 Continuing Education

6 7.1 *Hours required.* For license or certification periods beginning September 1, 20004 and thereafter, each massage/bodywork therapist shall complete twenty-four (24) hours of ~~acceptable~~ Board approved continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable

continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

¶ 7.1.1 Calculation of Hours. For academic course work, correspondence courses or seminar/workshop instruction, one (1) hour of acceptable continuing education shall mean 50 minutes of actual instruction. One (1) academic semester hour shall be equivalent to fifteen (15) continuing education hours; one (1) academic quarter hour shall be equivalent to ten (10) continuing education hours.

¶ 7.1.2 If during a licensing period an individual certified by the Board as a massage technician is issued a license as a massage and bodywork therapist, the continuing education requirement for that licensing period is as follows:

¶ 7.1.2.1 If the license is issued more than twelve (12) months prior to the next renewal date, the licensee shall complete twenty-four (24) hours of acceptable continuing education during the licensing period.

¶ 7.1.2.2 If the license is issued less than twelve (12) months prior to the next renewal date, the licensee shall complete twelve (12) hours of acceptable continuing education during the licensing period.

¶ 7.2 Proration. Candidates for renewal who were first licensed or certified twelve (12) months or less before the date of renewal are exempt from the continuing education requirement for the period in which they were first licensed or certified.

¶ 7.3 Content.

¶ 7.3.1 Except as provided in Rule 67.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge. For each biennial licensing period, massage therapists must complete at least eighteen of the required twenty-four hours of continuing education hours in supervised in-class hands-on study of the "practice of massage and bodywork" as defined in Rule 1.34. For each biennial licensing period, massage technicians must complete at least nine of the required twelve hours of continuing education hours in supervised in-class hands-on study of the "practice of massage and bodywork" as defined in Rule 1.34.

¶ 7.3.2 For each biennial licensing period, massage therapists may complete (but are not required to complete) up to six hours of the required twenty-four hours of continuing education hours in any combination of the areas and methods listed in Rules 67.3.2.1 through 67.3.2.5.

In each biennial licensing period, massage technicians may complete (but are not required to complete) up to three hours of the required twelve hours of continuing education hours in any combination of the areas and methods listed in Rules 67.3.2.1 through 67.3.2.6.

¶ 7.3.2.1 Courses in modalities such as are listed in Rule 1.45, which are modalities other than in the practice of massage and bodywork

¶ 7.3.2.2 Personal growth and self-improvement courses

¶ 7.3.2.3 Business Management Courses

¶ 7.3.2.4 Courses taught by correspondence or mail

¶ 7.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer.

¶ 7.3.2.6 Courses in anatomy or physiology

¶ 7.4 Board approval.

6.4.1 ~~"Acceptable continuing education" shall include any continuing education programs meeting the requirements of Rule 6.3 and offered or approved by the following organizations:~~

~~6.4.1.1 NCBTMB~~

~~6.4.1.2 American Massage Therapy Association~~

~~6.4.1.3 Association of Oriental Bodywork Therapists of America~~

~~6.4.1.4 Association of Bodywork and Massage Practitioners~~

~~6.4.1.5 Delaware Nurses Association~~

6.4.2 7.4.1 ~~Other~~ All continuing education must be pre-approved by the Board. ~~e~~Continuing education programs or providers ~~may~~ must apply for pre-approval of continuing education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

6.4.3 7.4.2 Self-directed activity: The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

6.4.4 7.4.3 The Board may award additional

continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6 7.3.2.

#### 6 7.5 Reporting.

6 7.5.1 For license or certification periods beginning September 1, 2004 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

6 7.5.2 If a continuing education program has already been approved by the Board, the candidate for renewal must demonstrate, at the Board's request, the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

~~6 5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6 7.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.~~

6 7.6 Hardship. A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

7.7 Continuing Education Requirements for Reinstatement of a Lapsed License. Unless extended by the Board for hardship as defined in Rule 7.6, and subject to the one (1) year limitation set forth in Rule 5.0, a massage therapist applying for reinstatement of a lapsed license must

provide to the Board adequate proof of the satisfactory completion of twenty-four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of application for reinstatement. A massage technician applying for reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of application for reinstatement. Continuing education hours required for reinstatement of a lapsed license may not be credited towards the hours required for renewal in any other licensing period.

7.7.1 A massage therapist who has let his/her license lapse for more than one (1) year and is ineligible for reinstatement and therefore required to submit a new application shall not be permitted to circumvent continuing education requirements. The massage therapist must provide to the Board adequate proof of the satisfactory completion of twenty-four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the new application. A massage technician who has let his/her license lapse for more than one (1) year and is ineligible for reinstatement and therefore required to submit a new application shall not be permitted to circumvent continuing education requirements. The massage technician must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the new application. Continuing education hours required to be filed with a new application may not be credited towards the hours required for renewal in any other licensing period.

7.8 Continuing Education Requirements for Licensees Returning from Inactive Status. Unless extended by the Board for hardship as defined in Rule 7.6, a massage therapist returning from inactive status must provide notice to the Board as set forth in Rule 6.2 and must provide to the Board adequate proof of the satisfactory completion of twenty-four (24) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the notice to return to active. A massage technician returning from inactive status must provide notice to the Board as set forth in Rule 6.2 and must provide to the Board adequate proof of the satisfactory completion of twelve (12) hours of Board approved continuing education within the immediately preceding two (2) year period prior to the date of the notice to return to active status. Continuing education hours required to return to active status may not be credited towards the hours required for renewal in any other licensing period.

**3 DE Reg. 1516 (5/1/00)**

**4 DE Reg. 1245 (2/1/01)**

**4 DE Reg. 1944 (6/1/01)**

**5 DE Reg. 1409 (1/1/02)**

**7 DE Reg. 40 (7/1/03)**

### **7 8.0 Scope of Practice**

Licensed massage/bodywork therapist and certified massage technicians shall perform only the massage and bodywork activities and techniques for which they have been trained as stated in their certificates, diplomas or transcripts from the school or program of massage therapy where trained.

### **8 9.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

§ 9.1 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.

§ 9.2 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.

§ 9.3 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).

§ 9.4 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.

§ 9.5 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.

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

§ 9.6.1 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.

§ 9.6.2 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.

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

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

§ 9.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's

chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

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

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

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

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

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

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

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 705

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

### 705 Training Camp and Special Duty in the National Guard and/or Reserves

#### Education Impact Analysis Pursuant to 14 Del.C. §122(d)

#### A. Type Of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of The Regulation

The Secretary of Education intends to amend 14 DE Admin. Code 705 Training Camp and Special Duty in the National Guard and/or Reserves in order to improve the language and to better reflect the intent of the statute.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses time off for school employees for service in the National Guard and Reserves not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses time off for school employees for service in the National Guard and Reserves not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses time off for school employees for service in the National Guard and Reserves not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses time off for school employees for service in the National Guard and Reserves not students' legal rights.

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

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

7. Will the decision making authority and accountability for addressing the subject to be regulated be

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be the additional cost of hiring a substitute for the person while on duty.

**~~705 Training Camp and Special Duty in the National Guard and/or Reserves~~**

**~~1.0 Leave for Training Camp and Special Duty in the National Guard and/or Reserves~~**

~~1.1 Any permanent and full-time employee who is a member of the National Guard or any reserve component of the Armed Forces of the United States and who is ordered to attend training camp or to perform special duty not in excess of fifteen (15) days in any calendar year shall be allowed leave with pay for attending such training sessions or performing such special duty. Leave for teachers shall apply only if the training is with the individual's unit.~~

~~1.2 Such military training or special duty leaves shall not be deducted from vacation leave or in any other way result in loss of privileges or compensation to said employee.~~

~~1.3 Employees called to temporary military training or special duty shall file a request for military leave with the secretary of the local board at least two weeks prior to their leave, along with a copy of the official orders summoning them to military service.~~

~~(See 29 Del.C. §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees)~~

~~3 DE Reg. 631 (11/1/99)~~

**705 Leave For Training Camp or Special Duty in the National Guard or the Military Reserves of the United States**

1.0 Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United

States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the Delaware Code, on a prorated basis in any calendar year.

1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.

1.2 Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.

**3 DE Reg. 631 (11/1/99)**

(Non-regulatory Note: See 29 Del.C. §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees)

---

**DEPARTMENT OF EDUCATION**

**14 DE Admin. Code 706**

**706 Credit for Experience for Full Time Service in the Armed Forces**

**Education Impact Analysis  
Pursuant to 14 Del.C. §122(d)**

**A. Type Of Regulatory Action Required**  
Amendment to Existing Regulation

**B. Synopsis Of Subject Matter Of The Regulation**

The Secretary of Education intends to amend 14 DE Admin. Code 706 Credit for Experience for Full Time Service in the Armed Forces in order to clarify the language and to better reflect the intent of the statute.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses credit for military service for school employees not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses credit for military service for school employees not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses credit for military service for school employees not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses credit for military service for school employees

not students' legal rights.

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to the State and to the local school boards of compliance with the amended regulation is the increased salary costs for the increased years of service.

706 Credit for Experience for Full-Time Service in the Armed Forces

### ~~706 Credit for Experience for Full-Time Service in the Armed Forces~~

~~1.0 Credit for Experience for service in the armed forces shall count for full time active duty, not in excess of six (6) years in the Armed Services of the United States, provided that the individual became a teacher, principal, superintendent, or other administrative employee in Delaware within five (5) years after completion of a tour of duty or within five (5) years after his completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of a tour of duty. Included in the six (6) years will be any instruction in Military Science given during years of enlistment.~~

~~1.1 Credit for service in the armed forces shall be calculated as follows: One year of experience shall be allowed for each year of service. For purposes of this section, 183 days in any calendar year shall constitute one year of experience, but not more than 1 year of experience may be credited for any 1 calendar year, except that a combined total of 91 days of service and employment in any of the positions identified above during any one school year will count as a year of experience.~~

(See 14 Del.C. §§1312(a) and 1327 Leave of Absence for Persons in Military Service).

### 706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States

1.0 Credit for Experience for full time active duty service, not in excess of six (6) years in the armed services of the United States, shall be granted provided the individual became a teacher, principal, superintendent, or other employee in a Delaware public school:

1.1 Within five (5) years after completion of a tour of duty; or

1.2 Within five (5) years after completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of the individual's tour of duty.

2.0 Any instruction in Military Science given during years of enlistment shall be included in the six (6) years in the armed services of the United States.

3.0 Credit for service in the armed forces of the United States shall be calculated as follows:

3.1 One year of experience shall be allowed for each creditable year of full time active duty service.

3.2 In the case of a teacher, principal, superintendent or other administrative employee a combined total of ninety one (91) days of service and employment in any of these positions during any one school year will count as a year of experience.

3.3 No more than one (1) year of experience may be credited for any one (1) calendar year.

(Non-regulatory Note: See 14 Del.C. §1312(a) and §1327 Leave of Absence for Persons in Military Service).

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 718

**718 Health Examinations for School District Employees****Education Impact Analysis  
Pursuant to 14 Del.C. §122(d)****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 718 Health Examinations for School District Employees in order to change the reference in the title and in 1.0 to all employees of school districts, charter schools and alternative programs instead of school district employees. This regulation was previously advertised in the July 1, 2004, Volume 8, Issue 1 of the Register of Regulations.

**C. Impact Criteria**

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

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

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

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

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

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

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

will remain in the same entity.

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

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

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

**718 Health Examinations for School District Employees**

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

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

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

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

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 805

**805 The School Health Tuberculosis (TB) Control Program****Education Impact Analysis  
Pursuant to 14 Del.C. §122(d)****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

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

This regulation was advertised previously in the May 1, 2004 Volume 7 Issue 11 and the July 1, 2004 Volume 8 Issue 1 Register of Regulations

**C. Impact Criteria**

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

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

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

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

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

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

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

and accountability for addressing the subject to be regulated will remain in the same entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.0 Positive Reactors

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

4.1.1 Skin test reaction recorded in millimeters.

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

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

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

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

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

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

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

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

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

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

#### 1.0 School Staff and Extended Services Personnel

##### 1.1 Definition

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

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

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

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

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

#### 2.0 Volunteers

##### 2.1 Definition:

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

2.2 Volunteers shall complete the Delaware Department of Education’s Health Questionnaire for Volunteers in Public Schools prior to their assignment and every fifth year thereafter.

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

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

#### 3.0 Students

##### 3.1 Definition:

“New School Enterer” means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students,

immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB exposure.

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

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

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

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

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

#### **4.0 Positive Reactors**

##### 4.1 Definition:

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

4.2 Positive Reactors need verification from a Health Care Provider or the Division of Public Health indicating the:

4.2.1 Skin test reaction recorded in millimeters;

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

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

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

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

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

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

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

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

---

## DEPARTMENT OF EDUCATION

14 DE Admin. Code 925

**925 Children with Disabilities**

**Education Impact Analysis  
Pursuant to 14 Del.C. §122(d)**

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

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities. Section 5.0, Individualized Education Program (IEP), would be amended to add new sections 5.3.2, 5.4.1 and 5.4.2. The change in 5.3.2 requires including the Career Technical Teacher Coordinator in the IEP meeting when the student is in a Cooperative Education Program or a Diversified Occupations Program. The changes in 5.4.1 and 5.4.2 address the use of the IEP forms.

### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses changes in the Individualized Education Program (IEP) which may contribute to improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses changes in the Individualized Education Program (IEP) which may contribute to ensuring that all children receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses changes in the Individualized Education Program (IEP) which may contribute to ensuring that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses changes in the Individualized Education Program (IEP) which may contribute to ensuring that all students' legal rights are protected.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal law requires the state to make regulations concerning students with disabilities.

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

### **925 Children With Disabilities**

#### **5.0 Individualized Education Program (IEP)**

An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the

annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

#### **5.2 IEP of Transferring Students with Disabilities**

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 **Del. C.** Ch. 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 When possible participation in a Cooperative Education Program or a Diversified Occupations Program is to be discussed, the Career Technical Teacher Coordinator shall attend the IEP meeting as per 14 **DE Admin. Code 525.**

~~5.3.2~~ 5.3.3 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program: Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The Primary IEP form found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) shall be used for students beginning

with preschool (age 3), until use of the Secondary IEP form. The Secondary IEP form found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) shall be used beginning in the eighth grade, or earlier, if the IEP team agrees.

5.4.2 The requirement that the local education agencies and other agencies use the forms found in *The Administrative Manual for Special Education Services (AMSES)* (Appendix A) does not prohibit or prevent an IEP team from including on an IEP any information, service or other notation the team determines necessary to provide Free Appropriate Public Education (FAPE) to any individual child with a disability.

~~5.4.1~~ 5.4.3 The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.

~~5.4.2~~ 5.4.4 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a Free Appropriate Public Education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.

5.6.2 Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational

progress. The team may utilize predictive data for children in their initial year of programming.

5.6.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

5.6.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

5.6.6 Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

5.6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled students for the sole purpose of satisfying the LRE requirements for students receiving extended school year services.

5.6.9 Transportation shall be provided to students except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

5.6.10 Written notice shall be provided to parents advising them that extended school year services will be discussed at the IEP meeting. The IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

5.6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

**3 DE Reg. 1551 (5/1/00)**

\* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE REGULATIONS FOR CHILDREN WITH DISABILITIES ARE AVAILABLE AT:

<http://www.state.de.us/research/AdminCode/title14/900/925%20Children%20with%20Disabilities.shtml#TopOfPage>

---

**PROFESSIONAL STANDARDS BOARD  
14 DE Admin. Code 1554**

**1554 Standard Certificate Reading Specialist**

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

**A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis Of Subject Matter Of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1554 Standard Certificate Reading Specialist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to clarify to which educators this regulation applies.

**C. Impact Criteria**

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

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

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

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

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

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

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

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

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

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

**1554 Standard Certificate Reading Specialist**

**1.0 Content:**

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Reading Specialist. \_

**2.0 Definitions:**

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

“**Department**” means the Delaware Department of Education.

“**License**” means a credential which authorizes the

holder to engage in the practice for which the license is issued.

**“Reading Specialist”** means an educator who provides one-on-one or small group, diagnostic, prescriptive teaching of reading, and includes, Title I reading teachers, reading resource teachers, Reading First teachers and coordinators, and individuals employed as building or district coordinators/Cadre of reading who work with teachers in reading and communication skills.

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

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

3.1 Degree

3.1.1 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in Reading; or

3.1.2 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in Reading, where the state approval body employed the appropriate NCATE specialty organization standards; or

~~3.1.3~~ 3.1.3 Master's degree (or a Bachelor's degree plus 30 graduate credits) from a regionally accredited college or university and,

~~3.3~~ **Specialized Professional Preparation**

3.1.3.1 ~~3.3.1~~ Minimum of 24 semester hour credits in graduate level reading courses covering the following content areas as specified below ~~unless otherwise specified:~~

3.1.3.1.1 ~~3.3.1.1~~ Language Development, , 3 semester hours;

3.1.3.1.2 ~~3.3.1.2~~ Methods in Process Writing/Language Arts, 3 semester hours;

3.1.3.1.3 ~~3.3.1.3~~ Assessment and Correction of Reading Difficulties, 6 semester hours;

3.1.3.1.4 ~~3.3.1.4~~ Practicum in Reading to include application of assessment and correction strategies, parent involvement strategies, and experience in working as a reading resource person with staff, 6 semester hours;

3.1.3.1.5 ~~3.3.1.5~~ Reading in the Content Areas, 3 semester hours;

3.1.3.1.6 ~~3.3.1.6~~ Children's or Adolescent Literature Across the Curriculum, 3 semester hours; and

3.1.3.1.7 ~~3.3.2~~ Minimum of three graduate semester hours from among the following: Seminar in

Reading Research, Emergent Literacy, Teaching English as a Second Language or Children's or Adolescent Literature.

3.2 Experience

3.2.1 Minimum of three years of successful teaching experience with at least two years in the K-12 classroom and,

~~3.3~~ **Specialized Professional Preparation**

3.3.1 Minimum of 21 semester hour credits in graduate level reading courses unless otherwise specified:

3.3.1.1 ~~Language Development, graduate or undergraduate, 3 semester hours~~

3.3.1.2 ~~Methods in Process Writing/Language Arts, 3 semester hours~~

3.3.1.3 ~~Assessment and Correction of Reading Difficulties, 6 semester hours.~~

3.3.1.4 ~~Practicum in Reading to include application of assessment and correction strategies, parent involvement strategies, and experience in working as a reading resource person with staff, 3 semester hours.~~

3.3.1.5 ~~Reading in the Content Areas, graduate or undergraduate, 3 semester hours.~~

3.3.1.6 ~~Children's or Adolescent Literature Across the Curriculum, 3 semester hours.~~

3.3.2 ~~Minimum of three graduate semester hours from among the following: Seminar in Reading Research, Emergent Literacy, Teaching English as a Second Language or Children's or Adolescent Literature.~~

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Reading Specialist after that date must comply with the requirements set forth in 14 DE Admin. Code 1516. This regulation shall be effective immediately. Notwithstanding this provision, Reading Specialists hired prior to July 1, 2006, who do not currently meet the requirements set forth herein, but who hold an Initial, Continuing or Advanced License; or a Professional Status Certificate issued prior to August 31, 2003, may be issued a Standard Certificate as a Reading Specialist contingent on their completion of the requirements set forth herein within three (3) years of the effective date of this regulation or their date of employment in the position of Reading Specialist, whichever is later.

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

Statutory Authority: 31 Delaware Code,  
Chapter 5, Sections 11002, 11004 and 11006  
(31 Del.C. §§11002, 11004 and 11006)

**PUBLIC NOTICE****Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding child care purchase of care policy, as it relates specifically to compensation, method of payment, and collection of fees.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware by October 1<sup>st</sup>, 2004.

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

**Summary Of Proposed Changes****Statutory Authority**

- 42 USC §§9858-9858q, Child Care and Development Block Grant
- 31 Delaware Code, Ch 3, Subchapter VII, Child Day-Care Centers

The proposed rule will allow providers to charge DSS fee paying clients the difference between the DSS determined parent fee and the provider's private fee. Providers will not be allowed to charge non-fee paying clients the difference.

The proposed changes will also allow self-arrange parents whose provider does not have a subsidy slot available to opt to pay only the difference between the DSS rate and the provider's private rate. Thus eliminating the 4 to 6 week wait for DSS client reimbursement.

The proposed changes will be incorporated into the

Division of Social Services Child Care Contract (Section IV, Method of Payment, and Collection of Fees, Paragraph J) and the Division of Social Services Child Care Certificate Provider Agreement and Registration Form (Section II, Fees, Paragraph C).

Implementation of the proposed provisions on November 10<sup>th</sup>, 2004 is contingent upon promulgation of this rule.

**DSS PROPOSED REGULATIONS #04-16****REVISIONS:****11002.9 Definitions and Explanation Of Terms**

(Break in Continuity of Sections)

AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 200 percent of the federal poverty level.

AB. Job Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: Food Stamp Employment & Training contracted programs, JTPA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

AF. Parental Choice - The right of parent/caretakers to choose from a broad range of child care providers, the type and location of child care.

AG. Protective Services - The supervision/ placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.

AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by TANF policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the CCMIS, this is Category 31 child care.

AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parent/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parent/Caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a Food Stamp Employment & Training - TANF education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under 18 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.

AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.

AR. Technical Eligibility - Parent/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Purchase of Care Plus (P.O.C. +) - Care option that allows providers to charge fee paying clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives DSS rate, the DSS determined parent fee and any additional provider-determined co-pay.

(Break in Continuity of Sections)

### 11004.4.1 Explanation of Certificates

Use the following as a guide to explain the child care certificate package.

A. Parent/caretakers can use this package to select a child care provider of their choice. However, they must select care that is legal. Legal care is care that is licensed or

that is exempt from licensing requirements.

B. Licensed Care: In Delaware, all family child care homes, group homes, and child care centers must have a license to operate. Do not allow a parent to select an unlicensed family, group, or center child care provider.

C. License-exempt Care: The following provider types are exempt from licensing requirements in Delaware:

1. persons who come into the child's own home to care for the parent/caretaker's child,
2. relatives who provide care in their home for the parent/caretaker's child;
3. public or private school care,
4. preschools and kindergarten care, and
5. before and after school care programs.

Though the above provider types are exempt from licensing requirements, they are still required to meet certain health and safety standards. These standards are:

1. maintaining documentation of the child's immunization record,
2. safe and clean building premises,
3. providers and those 18 and older who live in the home where care is being provided must not have any record of child abuse or neglect (do not allow persons to provide care where there is a known record of abuse or neglect), and
4. relatives who provide care cannot be part of the welfare grant.

D. Once parent/caretakers know the appropriate provider to select, they also need to know how DSS will pay for the care provided. DSS has established rates above which it will not pay (see Appendix II for current reimbursement rates).

Parent/caretakers will need to know these rates and whether or not the provider is willing to accept them. If the provider is willing, the certificate will act just like a DSS contract and DSS will pay the provider directly less any child care fee. If the provider is not willing, the parent/caretaker will self-arrange care with the individual provider.

If the provider contracted purchase of care slots are full, the provider may offer the parent/caretaker the option of receiving service as a purchase of care plus client. The provider then receives the regular DSS subsidy from the Division, the DSS determined parent fee and any additional fee determined by the provider from the parent/caretaker.

If the provider is not willing to accept purchase of care or purchase of care plus, the parent/caretaker will self-arrange care with the individual provider. The parent/caretaker will pay the provider and submit an original receipt to DSS for reimbursement. The parent/caretaker, however, will only receive reimbursement up to the DSS statewide limit.

E. The provider will need to complete and return the original copy of the actual child care certificate before Case Managers can authorize care. Relative and non-relative

providers will also complete and return the Child Abuse/Neglect History Clearance Form or forms for all members 18 and older living in the home. If this form is not returned, discontinue care. Other exempt providers will need to keep a completed child/abuse and criminal history declaration statement on file for each child care staff member.

F. Service will not be delayed because of an incomplete child abuse clearance check, but remind parent/caretakers that DSS will not pay for care if, after authorization, the check should reveal a history of abuse or neglect.

G. Allow parent/caretakers one month to use a certificate. If the certificate is not used within that time, it no longer remains valid and the parent/caretakers will need to obtain a new certificate if they still wish to receive service.

H. The original copy of the child care certificate is completed and returned by the provider. The certificate package provides instructions for completion. The provider should keep a copy.

(Break in Continuity of Sections)

#### **11004.7.2 Paying the Child Care Fee**

Parent/caretakers will pay their child care fee directly to the child care provider. This fee, in combination with what DSS pays the provider, represents the reimbursement limit DSS allows for child care services. These limits are based on the child care type and the age of the child. DSS ~~either~~ has contracts with providers for these rates ~~or providers agree to accept them as their rates~~ which include purchase of care plus option. If, however, providers do not accept these rates or the purchase of care plus option, parent/caretakers will self-arrange care directly with the provider. In this instance, the parent/caretaker will not only pay their fee, but also the provider's full charge for care. The parent/caretaker will submit an original receipt for reimbursement, at which time DSS will reimburse the parent/caretaker in an amount up to the statewide limits (see 11004.4.1 above), less the child care fee.

Parent/caretakers who fail to pay their child care fee or who fail to make arrangements to pay past fees owed will have their child care services terminated. Providers are responsible for informing DSS of the parent/caretaker's failure to pay the fee. Obtain such information in writing from providers whenever possible. However, it is acceptable to obtain this information verbally if the following procedures are used.

A. Accept and document (e.g. note the date and time of the call/conversation and the information given in the case record) the information from the provider.

B. Request that the provider follow up this information in writing to the child care monitor in their county.

C. Send the Failure to Pay Child Care Fee Closing

(CCMIS Notice 4060) to the parent/caretakers informing them that service will terminate due to non-payment of the fee unless arrangements are made with providers to pay past fees owed.

NOTE: Allow timely (10 days) and adequate notice.

D. Require parent/caretakers to submit information in writing which details the arrangements they made with providers to pay past fees owed.

Parent/caretakers whose child care case closes because of failure to pay child care fees cannot receive a new authorization for service until they satisfy or make arrangements to pay past fees owed.

(Break in Continuity of Sections)

#### **11006.4.2 Fee Paying Clients**

The client fee is based on the DSS scale according to the client's income. The provider is responsible for collecting fees from their private and DSS fee-paying clients. The provider must develop a fee collection policy that states the fees collected prior to or after delivery of service and the frequency of collection, such as weekly, biweekly, or monthly. The provider's fee collection policy should be discussed with the parent/caretaker upon initial enrollment at the facility and should be reviewed periodically.

The provider must ensure that enrollment procedures include how the provider informs parent/caretakers of the availability of purchase of care slots for non-fee paying clients.

---

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 607 (18 Del.C. §607)

### **Notice Of Public Hearing**

#### **Regulation 504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants [Formerly Regulation 47]**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Tuesday, October 5, 2004, at 10:00 AM in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers.

The purpose for amending Regulation 504 is to change certain course requirements relating to continuing education for licensed producers, to modernize and streamline course

approval procedures, to change reciprocity guidelines to reflect changes in policy and law, and to make technical corrections and changes to the existing regulation. The foregoing purposes are general in nature and do not include all specific changes to the existing regulation. The proposed amendments are designed to incorporate the changes to continuing education standards for producers approved by the National Association of Insurance Commissioners. A copy of the proposed regulation is on the Delaware Department of Insurance website at <http://www.state.de.us/inscom/>

The hearing will be conducted in accordance with 19 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday October 4, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

## **Regulation 504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants [Formerly Regulation 47]**

### **1.0 Statutory Authority and Purpose**

This Regulation is established and promulgated pursuant to 18 **Del.C.** §§314, ~~4726-1718~~ and 29 **Del.C.** Ch.101.

### **2.0 Purpose**

The purpose of this Regulation is to establish requirements for insurance education and ethics for resident insurance adjusters, public adjusters, producers, agents, brokers, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the benefit of Delaware consumers.

### **32.0 Definitions**

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

**"Administrative record"** means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

**"Audit"** means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices

where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines, ~~and~~ self-study programs and distance learning programs based on current guidelines.

**"Authorized representative"** means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

**"Commissioner"** means the Insurance Commissioner of the State of Delaware and/or such designee appointed by the Commissioner.

**"Completion"** when used in the context of:

- **Self-Study**, means a passing grade of 70% or better on the examination.
- **Class**, means attendance for the full amount of time approved for each course.
- **Seminar** means attendance for the full amount of time assigned for each workshop or break-out session selected.

**"Compliance date"** means the 28th day of February of ~~the continuing education reporting period for which resident licensee continuing education or non-resident renewal is required. Each license biennium shall commence on March 1st and end February 28th of the odd year period for non-residents and the even year for residents~~ even numbered years. Each biennial license shall commence on March 1st and end February 28th of even numbered years.

**"Contact person"** means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or corporate officer, and who designates the school official to represent the entity.

**"Continuously licensed"** means an uninterrupted license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

**"Course"** ~~shall~~ means any class, self-study, ~~or~~ seminar or distance learning course for insurance ~~producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that~~ producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that has been approved by the Department for the purpose of complying with continuing education requirements.

**"Credit hour (CEUs)"** means one (1) unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

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

**"Disciplinary action"** means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer or a licensee.

**"Distance learning"** or **"Distance education"** means instructional delivery that does not constrain the student to be physically present in the same location as the instructor. Distance education includes but is not limited to: audio, instructional television, videotape, teleconferencing, audio/video conferencing, and computer conferencing, web based instruction, traditional self-study course(s) including CDs and DVDs as supplied materials and any other planned learning that normally occurs in a different place from teaching and as a result requires special techniques of course design, special instructional techniques, special methods of communication by electronic and other technology, as well as special organizational and administrative arrangements approved by the Department.

**"Entity sponsor"** or **"sponsor"** means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

**"Ethics credits"** means the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another, and conflicts of interest and matters that deal with individual character and personal characteristics such as honesty, integrity and professionalism in the insurance industry.

**"Hour"** means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of which must be accounted for on the agenda or syllabus. For self-study courses, "hour" means ~~fifty (50)~~ sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

**"Initially Licensed"** means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

**"Recognized association"** means an insurance industry association established for at least 5 years.

**"School official"** means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored,

instructor qualifications, and attendance records.

**"Syllabus"** means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

## 2 DE Reg. 122 (7/1/98)

### 43.0 Course Providers

~~43.1~~ **Provider Approval.** A provider who sponsors a continuing education course must be approved by the ~~Commissioner~~ Department and shall be operated by, including but not limited to, an authorized insurance company, a recognized insurance agents' association, an insurance trade association, a self-insurance fund, a non-profit educational institute, national provider, a member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on written forms or in an electronic format approved prescribed by the Commissioner Department. The Department may approve of or participate in reciprocal agreements relating to continuing education with the NAIC and/or its members. In assessing a provider's application for approval, the ~~Commissioner~~ Department may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

#### 43.2 General Requirements and Responsibilities.

43.2.1 Providers shall maintain the records of each individual completing a course for ~~three (3)~~ 4 years from the date of completion and shall send the Department a roster of those in attendance within thirty (30) days of the course completion date on forms or in electronic format prescribed by the Department upon request of the Commissioner submit a course roster list of course attendees which includes all information available on Form CE-4.

43.2.2 Providers shall notify the ~~Producer Agent and Agency~~ Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

43.2.3 Course providers will provide each licensee successfully completing their program a Certificate of Completion ~~Course report form CE-4 in accordance with section 8.4. It must contain, at a minimum:~~

- 4.2.3.1 Licensee's name
- 4.2.3.2 Social Security Number
- 4.2.3.3 Title of the educational activity
- 4.2.3.4 Delaware course number
- 4.2.3.5 Delaware sponsor number
- 4.2.3.6 Number of CEUs earned
- 4.2.3.7 ~~Authorized signature of school~~

official

for attendees' records only after successful completion of the entire approved education course/activity. Entity Sponsors are required to distribute a Certificate of Completion to each licensee successfully completing the educational activity within thirty (30) calendar days.

43.2.4 Course providers shall obtain the Commissioner Department's approval for each course offered. No prior approval shall be required for any course offered through any NAIC sponsored reciprocal agreement but course credit under this regulation shall only be allowed for those subjects eligible for course credit in Delaware. A Course Report Form CE-4 shall be completed and distributed to the licensee only after completion of the entire course. Entity Sponsors are required to distribute course report forms to each licensee successfully completing the educational activity within fifteen (15) calendar days.

43.2.5 No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the Commissioner Department upon request.

43.2.6 Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

43.2.7 One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

43.2.8 Course Providers are responsible for the actions of their school officials, instructors, speakers and monitors.

43.2.9 Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

43.2.10 Educational activities are approved for a term of 3 years unless requested by the Commissioner to be resubmitted for approval. Course approvals, once granted by the Department, shall remain valid until modified or terminated by the entity sponsor or Department. Any changes or modifications to one or more courses by an entity sponsor shall not be valid until submitted to and approved by the Department in writing. All courses approved for credit as of November 1, 2004 shall not be subject to re-approval under the provisions of this section.

43.2.11 No activity may be advertised as having been approved until the sponsor receives written notification from the Department. The use of "approval pending" is acceptable advertising.

#### **45.0 Instructors**

45.1 An entity sponsor shall certify to the Department that the instructor shall possess one or more of the following qualifications:

45.1.1 A minimum of 3 years working experience in the subject matter being taught.

45.1.2 An approved professional designation in accordance with Section 9.3 from a recognized association.

45.1.3 A degree from an accredited school in the subject matter being taught.

45.1.4 Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

45.1.5 An instructor who is a licensee shall receive two times the same number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

45.1.6 Instructors shall have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course provider's policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors. Course submissions must include a narrative biography of each instructor.

#### **56.0 Commissioner Department's Action upon Violation or Non-conformity by Course Provider or Instructor**

If the Commissioner Department determines that a course provider or instructor has violated any provisions of this regulation, the Commissioner Department may withdraw approval of the entity sponsor or instructor or may order a monetary penalty or refund of course fees to licensees who attended the course, or both. The Commissioner Department may also refuse to approve courses conducted by specific sponsors or instructors if the Commissioner Department determines that past offerings by those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The Commissioner Department or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

#### **67.0 Appeals**

67.1 Appeals shall be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Ch.101 and 18 Del. C. §§ 323-28.

67.2 Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

67.2.1 A synopsis of the issue,

67.2.2 The basis for the appeal,

67.2.3 The name, address, and telephone number of a contact person,

67.2.4 A copy of the original course submission and supporting documents, and

67.2.5 A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

### **78.0 Required Forms:**

7.1 Requests for entity sponsor approval shall be made to the Department on such forms as shall be authorized by the Department.

7.2 Requests for entity sponsor course approval shall be made to the Department on such forms as shall be authorized by the Department.

Course Providers shall apply for registration, course submission, repeat course submission and licensee certificate of completion (Delaware Course Report Form) on forms prescribed and approved by the Commissioner. The following forms apply unless or until revised by the Commissioner:

8.1 Request for entity sponsor approval shall be made on Department Form CE-1 (Attachment 1).

8.2 Request for entity sponsor course approval shall be made on Department Form CE-2 (Attachment 2).

8.3 Course providers shall submit a Form CE-3 to the Department not less than 7 days prior to the offering of any course that was previously approved by the Department for an unspecified date or is to be repeated. (Form CE-3 Attachment 3)

8.4 Form CE-4 Course Report Form. Form CE-4 contents may be submitted in an alternative format so long as prior approval is obtained.

8.5 Continuing Education Course Evaluation Form CE-5. The Department may request licensees to complete course evaluation forms as a means of auditing a course and entity sponsor.

### **89.0 Licensee's Responsibility:**

89.1 Each licensee shall retain each original course completion ~~certificate/course report form(s) CE-4~~ for a period of 3 years. The certificate of completion Form CE-4 may be required in the event of a discrepancy between the licensee's records and the Department's records. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Each licensee will have thirty (30) days to produce such records upon request or audit by the Department Pursuant to section 8.5, the Department may require a licensee to complete a course evaluation form.

89.2 General Requirements. Resident licensees and producers not otherwise exempted shall earn, at a minimum,

the number of education credits described below.

89.2.1 Resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product knowledge, laws, rules and regulations.

89.2.2 Resident adjusters, public adjusters Limited Representatives, Adjusters and Fraternal Agents shall be required to fulfill ~~twelve (12)~~ (12) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

89.2.3 Resident licensees subject to this regulation shall file with the Department a copy of their completed course report forms. Course report form CE-4(s) must be received on or before March 20th following the preceding biennium compliance date. Failure to timely file will result in notice of suspension and fines under section 10.0 of this regulation. 9.2.4 Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium by mail or by electronic access as the Department deems appropriate. The licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline (February 28th of even years) and include a copy of the providers course completion certificate course report form CE-4.

89.2.45 The maximum number of carryover credits shall not exceed ~~five (5)~~ 10 credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Credits in excess of the mandatory requirements set forth in section 8.2.1 may be applied to the licensee's general course requirements for those in excess of the March 1, 1997 through February 28, 1998 Continuing Education period. Thereafter, the maximum number of carryover credits shall not exceed 5 credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Ethics credits in excess of the mandatory requirement may apply to non-ethics credit requirements.

9.2.6 Fulfillment of continuing education requirements includes completion of approved subject matter and ethics requirements during the biennium.

9.2.7 No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed. A total of 5 credits in excess of 20 credits earned may apply to carryover during the newly licensed biennium period.

89.3 Automatic credit. For ~~experience~~ aAn

individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period ~~and/or who for holding~~ a professional designation shall receive an automatic credit of ~~twelve~~ (12) credits in each biennium. ~~The Department shall maintain a list of approved professional designations. Approved professional designations are the AAI, CEBS, CLU, CPCU, ChFC, FLMI, CFP, FSPA, CIC and RHU.~~ Automatic credits may not be applied to satisfy the mandatory continuing education courses set forth in section 8.2.1 ethics credit requirements.

89.4 License reinstatement after suspension, ~~or revocation or cancellation.~~ All resident ~~and nonresident~~ licensees whose licenses were canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del.C. §170624 including the retaking of all exams for the lines of authority under which the individual proposes to transact insurance. Any licensee who is reinstated under the provisions of this subsection shall not be entitled to the waiver provided for in section 8.2.5.

89.5 Extension of time. For good cause shown, the ~~Department Commissioner~~ may grant an extension of time during which the requirements imposed by this regulation may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the ~~Commissioner~~Department no less than thirty (30) days before the expiration of the biennium period.

89.6 Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the ~~Department Commissioner~~ for good cause shown. "Good cause" includes long-term illness or incapacity, ~~servicing full time in the armed forces of the United States of America on active duty outside of the state of Delaware,~~ and any other emergency situations deemed appropriate by the ~~Department Commissioner~~. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the ~~Department Commissioner~~ no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Those individuals serving full time in the armed forces of the United States of America on active duty outside of the State of Delaware shall notify the Department upon their return by supplying a copy of their activation orders as part of their application for a waiver. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

89.7 Sixty (60) days prior to the start of each biennium, the Department shall prepare and publish a list of those lines of insurance for which the producers are exempt

from the requirements of section 8. Exemptions to continuing education requirements:

9.7.1 ~~Agents licensed for the lines of title insurance or travel accident and baggage insurance.~~

9.7.2 ~~Interim Agents.~~

89.8 Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section 8.2.2 of this regulation. Nonresident adjusters and public adjusters must meet the license requirements of their home state. Nonresident Agent, Broker, Consultant responsibilities:

9.8.1 ~~Nonresident licensees shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd years with a deadline date of February 28th every odd year beginning in year 1999.~~

9.8.2 ~~The Department will send renewal notices to all nonresident licensees at least ninety (90) days before the end of the biennium. Nonresidents may request a thirty (30) day extension to file for renewal provided it is in writing to the Commissioner at least thirty (30) days prior to the biennium deadline and shall provide evidence of seeking a home state letter of certification.~~

9.8.3 ~~Nonresidents who fail to provide certification from home state under this regulation shall be subjected to the same penalties as a resident agent under this regulation pursuant to section 10.0.~~

9.9 ~~Nonresident Adjusters responsibilities:~~

9.9.1 ~~Nonresidents receiving a license in Delaware no requirements for the biennium in which they are licensed.~~

9.9.2 ~~Nonresident adjusters who must meet continuing education requirements established by the insurance department in their home state shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd years. The first biennium for which nonresidents shall meet continuing education requirement begins on March 1, 1999 and ends February 28, 2001.~~

9.9.3 ~~Nonresidents who are not required to complete continuing education requirements in their home state are subject to the same continuing education requirements that a resident adjuster must complete in accordance with section 9.2.2 of this regulation.~~

9.9.4 ~~Exemptions to Adjuster Continuing Education Requirements. Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section~~

~~9.2.2 of this regulation. Nonresident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status. The filing requirement for nonresidents shall be on odd years. The first biennium for which nonresidents shall meet continuing education requirements begins on March 1, 1999 and ends February 28, 2001.~~

#### **910.0 Penalty for Noncompliance-**

910.1 Pursuant to 18 Del.C. §§334, 17132, and 171834, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under section 89.5 of this regulation and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

910.2 Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12) months, all license(s) and appointments shall be reinstated unless or until the insurer notifies the Department Commissioner and licensee in writing of the insurer's intent to terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subjected to complying with 18 Del.C. §170624 including the retaking of all examinations for line(s) of authority for which the individual licensee seeks a license that the individual proposes to transact insurance.

910.3 The Commissioner may, by Order based upon a reasonable belief that a violation of Title 18 occurred, require any individual licensed under 18 Del.C. Ch. 17 ~~based upon reasonable belief that a violation of Title 18 occurred,~~ to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

#### **101.0 Continuing Education Advisory Council**

10.1 The Council shall consist of ~~fourteen~~ (104) licensees drawn from the professional organizations and the insurance industry in the State, 5 from the life and health field, ~~and~~ 5 from the property and casualty field and four (4) from the claims settlement field.

101.2+ One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Department Commissioner regarding acceptance/ rejection and the number of CEUs to be granted if accepted.

101.32 The Council shall also advise the Department Commissioner on matters of concern as they arise and provide liaison between the Department and the professional organizations.

101.43 Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

101.54 The Department's decision with respect to any Entity Sponsor submission shall be final. All previously approved continuing education courses at the time this regulation becomes effective shall resubmit for approval within twelve months of the effective date of this regulation. Such courses must be resubmitted for approval within twelve (12) months of the effective date of this regulation.

~~11.5 The final decision on each Entity Sponsor submission shall be the Commissioner's.~~

#### **121.0 Separability**

~~12.1~~ If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

#### **132.0 Effective Date**

~~13.1~~ This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 504 (Formerly Regulation 47) as last amended in 1987 shall remain in effect. The amendments to this Regulation shall become effective November 15, 2004. Any matters that are not merely procedural in nature arising prior to November 15, 2004 shall be governed by the provisions of the prior version of this regulation in effect at the time the matter arose.

March 1, 1985

Amended June 6, 1986

Amended March 24, 1987

Amended March 1, 1998

Amended \_\_\_\_\_, 2004

## 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.

## **DELAWARE STATE FIRE PREVENTION COMMISSION**

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

### **ORDER**

The State Fire Prevention Commission (“the Commission”) held a properly noticed, public hearing on July 20, 2004 to receive comment on proposed additions, revisions, deletions and modifications to Commission Regulations. (Attached to this Order as “Exhibit A”). The attendance sheets and transcribed minutes of this hearing are attached to this Order as Exhibit “B” in lieu of a statement of the summary of the evidence. There were no written comments received by the Commission.

Based upon the evidence received, the Commission finds the following facts to be supported by the evidence:

1. There was no public comment concerning the following proposed regulations:

- Part I, Annex A
- Part I, Annex B
- Part II, Chapter 6
- Part V, Chapter 1 - 5
- Part VI, Chapter 3
- Appendix E

2. Although the Commission held a hearing in the

afternoon and in the evening, no public comment was received except for a brief explanation of the changes offered by the State Fire Marshal’s Office (Exhibit “C”).

### **THE LAW**

The State Fire Prevention Commission’s rulemaking authority is provided by 16 **Del.C.** §6603, that states:

#### **§6603. State Fire Prevention Commission -- Promulgation of regulations.**

The State Fire Prevention Commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion. Such regulations, amendments or repealers shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, cities and political subdivisions of the State. . . .

### **DECISION**

The Commission hereby adopts the Regulations as proposed with the alterations and clarifications noted in this Order and a copy of the Regulations as adopted is attached to this Order. The Commission relies upon its expertise in the area and the evidence presented in the testimony of the State Fire Marshal’s Office.

It is so Ordered this 17th day of August 2004.

**STATE FIRE PREVENTION COMMISSION**

Kenneth H. McMahon, Chairman  
 W. (Bill) Betts, Jr., Vice-Chairman  
 Carlton E. Carey, Sr.  
 Frances J. Dougherty  
 Robert Ricker  
 Daniel W. McGee  
 Jasper H. Lakey

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

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

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

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

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

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

**Chapter 8, Installation Requirements.**

**8.16 System Attachments.**

**~~8.16.2 Arrangement.~~**

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

**8.16.2 Fire Department Connection.**

**~~8.16.2.4 Arrangement~~**

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

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

**Chapter 7, System Components.**

**7.6 Alarms.**

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

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

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

**follows:**

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

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

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

**9.23 Room Heaters.**

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

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

**Chapter 1, General Provisions.**

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

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

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

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

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

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

*Exception To ~~1-4.1~~ and ~~1-4-2.1.4.1~~ and ~~1.4.2~~: One- and Two-Family Dwellings are not required to comply with these sections.*

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

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

**ADD New §~~3-10-4~~ 3.10.4:**

**~~3-10-4~~ 3.10.4 Fire Protection At Bulk Plants.**

~~3-10-4.1~~ **3.10.4.1 Application.** This section regulating bulk plants applies to facilities whose primary purpose is to receive gas by tank car, tank truck, or piping, and distribute

the gas to the end user by use of portable container delivery, tank truck, or gas piping.

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

**~~3-10.4.2~~ 3.10.4.2 Definitions.**

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

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

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

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

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

**~~3-10.4.6.1~~ 3.10.4.6.1** The Office of State Fire Marshal shall hand deliver to the Fire Department Chief Officer having jurisdiction a site plan and set of structural or building plans that have been submitted for review and approval by the Office of State Fire Marshal; the Fire Department Chief Officer shall sign when accepting the plans from the Office of State Fire Marshal.

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

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

**Chapter 4, LP-Gas Liquid Transfer.**

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

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

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

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

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

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

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

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

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

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

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

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

**Chapter 9, Building Service and Fire Protection Equipment.**

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

**~~AMEND §9-2.1, by adding a new §9-2.1.1, Unvented Fuel-Fired Heating Equipment, and renumber the following sections, to read as follows:~~**

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

**~~9-2.1~~ 9.2.1 Air Conditioning, Heating, Ventilating Ductwork, and Related Equipment.-**

**~~9-2.1.1~~ 9.2.1.1** Unvented fuel-fired heating equipment shall be prohibited in bathrooms and sleeping areas of all occupancies. In all other areas, gas space heaters installed in compliance with NFPA 54, National Fuel Gas Code, as adopted and modified by these Regulations shall be permitted.

**Chapter 16, New Day Care Occupancies.**~~16-2~~ **16.2 Means of Egress Requirements.**~~16-2.2~~ **16.2.2 Means of Egress Components.**~~16-2.2.2~~ **16.2.2.2 Doors.**

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

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

~~16-3~~ **16.3 Protection.**~~16-3.4~~ **16.3.4 Detection, Alarm, and Communication Systems.**

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

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

**Chapter 24, One- And Two-Family Dwellings.**~~24-1.1~~ **24.1.1 Application.**

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

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

**Chapter 26, Lodging Or Rooming Houses.**~~26-3~~ **26.3 Protection.**~~26-3.3~~ **26.3.3 Detection, Alarm, And Communication Systems.**

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

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

**Chapter 30, New Apartment Buildings.**~~30-3.4~~ **30.3.4 Detection, Alarm, and Communication Systems.**

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

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

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

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

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

**Chapter 32, New Residential Board And Care Occupancies.**~~32-2~~ **32.2 Small Facilities.**

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

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

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

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

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

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

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

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

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

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

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

**AMEND PART II, CHAPTER 6 AS FOLLOWS:****Delete A-6-1****6-1\* General.**

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

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

**6-1.4.1\*** Residential sub-divisions, located with the jurisdiction of New Castle County, containing more than twenty-five (25) lots, or minimum aggregate side yard widths of less than thirty (30) feet. These requirements are contained in ~~§20-61~~ of New Castle County Code Chapter 40, Article 12, reproduced in Appendix A of this Regulation.

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

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

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

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

(d) Regulations governing on-site water supply systems are to be found in Appendix XII of this Chapter. An on-site water supply system shall further require a permit

from appropriate state agencies (Ord. No. 73-103, Sec. 5; Ord. No. 90-200, Sec. 2, 9-25-90)

**A-6-1.4.1 New Castle County Code Chapter 40, Article 12, Sewer and Water Impact:****SECTION 40.12.210 WATER SERVICE**

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

**SECTION 40.12.115 WATER SUPPLY**

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

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

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

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

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

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

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

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

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

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

**SECTION 40.22.430 FIRE HYDRANTS AND FIRE LANES.**

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

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

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

such a fashion as to indicate the purpose and intent thereof and to prohibit parking thereon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6-4.1 Where water is available and a water distribution system is required for stand alone/detached one- and two family dwelling sites, the infrastructure for fire protection water shall be provided. The infrastructure for fire flow shall consist of properly listed and sized underground mains, stub ups for hydrants, and associated valves. The fire hydrants shall be installed prior to the fire flow requirements taking effect.

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

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

6-4.2 The requirements of Fire Flow Table 1, with respect to the Standard on Water Supplies for Suburban and

Rural Fire Fighting, NFPA 1142, as adopted and/or modified by these Regulations, may be applied to subdivisions of 25 or less lots of one and two family detached homes, where central water is provided. However, the requirement for water flow for fire protection shall be required when:

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

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

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

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

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

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

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

Exception: Dead end mains exceeding 600 feet may be a minimum of 8 inches in diameter if an engineering analysis, acceptable to the Office of the State Fire Marshal, is submitted by a registered Professional Engineer demonstrating that the minimum flows and duration specified elsewhere in this Regulation are met or exceeded.

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

**Fire Flow Table 1\***

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

| Occupancy | Maximum Aggregate Gross Square Footage | Provide a fire alarm system per 6-3.1.4 | Minimum Set Back from all property lines | Maximum Height | Exposure Hazard on the Same Property | Internal Fire Separation | Apply |
|-----------|--|---|--|----------------|--------------------------------------|--------------------------|-------|
|-----------|--|---|--|----------------|--------------------------------------|--------------------------|-------|

# FINAL REGULATIONS

|  |                 |  |     |                                       |      |  |           |
|--|-----------------|--|-----|---------------------------------------|------|--|-----------|
| One & Two – Family Detached Dwellings                                      | 10,000          | <u>no</u>                              | 15’ | 3 Stories<br>35’                      | 10’+ | n/a                                    | NFPA 1142 |
| Multi-Family & Other Residential   | 10,000          | <u>no</u>                              | 15’ | 3 Stories<br>35’                      | 10’+ | n/a                                    | NFPA 1142 |
| Rowhouses & Townhouses   | 10,000          | <u>no</u>                              | 15’ | 3 Stories<br>35’                      | 10’+ | 2-Hr rated wall<br>Part I<br>Chapter 2 | NFPA 1142 |
| Assembly   | 5,000           | <u>no</u>                              | 15’ | 1 Story<br>15’                        | 10’+ | n/a                                    | NFPA 1142 |
| Assembly <sup>1</sup>  | 5,001 to 10,000 | <u>YES</u>                             | 15’ | 2 Stories<br>30’                      | 10’+ | n/a                                    | NFPA 1142 |
| Health Care<br>Business<br>Education                                       | 10,000          | <u>no</u><br><u>no</u><br><u>no</u>    | 15’ | 2 Stories<br>30’                      | 10’+ | n/a                                    | NFPA 1142 |
| Storage<br>Industrial<br>Mercantile  | 5,000           | <u>no</u><br><u>no</u><br><u>no</u>    | 15’ | To be reviewed on an individual basis | 15’+ | n/a                                    | NFPA 1142 |
| Storage <sup>1</sup><br>Industrial <sup>1</sup><br>Mercantile <sup>1</sup> | 5,001 to 10,000 | <u>YES</u><br><u>YES</u><br><u>YES</u> | 25’ | To be reviewed on an individual basis | 15’+ | n/a                                    | NFPA 1142 |
| Mini-Storage   | 5,000           | <u>no</u>                              | 15’ | 2 Stories<br>30’                      | 15’+ | n/a                                    | NFPA 1142 |
| Mini-Storage   | 5,001 to 10,000 | <u>no</u>                              | 25’ | 2 Stories<br>30’                      | 15’+ | n/a                                    | NFPA 1142 |

**Fire Flow Table 2**

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

The requirements of Fire Flow Table 2 apply to areas where there is a public, private, or central water system.

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

| Occupancy                                | Maximum Aggregate Gross Square Footage | Internal Fire Separation               | Flow Required  | Hydrant Spacing      |
|--|--|--|--|----------------------|
| One- and Two-Family Detached Dwellings * | 10,000                                 | n/a                                    | 500 GPM<br>20 PSI Residual Pressure<br>1 Hour Duration   | 1,000 feet on center |
| Other Residential*                       | 10,000                                 | n/a                                    | 1,000 GPM<br>20 PSI Residual Pressure<br>1 Hour Duration | 800 feet on center   |
| Rowhouses* & Townhouses*                 | 10,000                                 | 2-Hr rated wall<br>Part I<br>Chapter 2 | 1,000 GPM<br>20 PSI Residual Pressure<br>1 Hour Duration | 800 feet on center   |

|  |        |     |  |                    |
|--|--------|-----|--|--------------------|
| Assembly<br>Health Care<br>Business<br>Education | 10,000 | n/a | 1,000 GPM<br>20 PSI Residual Pressure<br>1 Hour Duration | 800 feet on center |
| Storage<br>Industrial<br>Mercantile              | 10,000 | n/a | 1,500 GPM<br>20 PSI Residual Pressure<br>2 Hour Duration | 800 feet on center |
| Mini-Storage                                     | 10,000 | n/a | 750 GPM<br>20 PSI Residual Pressure<br>1 Hour Duration   | 800 feet on center |

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

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

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

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

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

**1-2.8 Gated Communities**

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

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

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

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

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

**3-4.1\* Smoke Detection Systems Required.** All new apartment buildings shall be provided with an automatic smoke detection system in the interior corridors and/or hallways and/or stairways, in accordance with ~~§7-6, except as modified by 18-3.4.2 through 18-3.4.4,~~ of the Life Safety Code, NFPA 101, and the National Fire Alarm Code, NFPA 72, as adopted and/or modified by these Regulations.

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

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

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

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

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

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

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

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

**3-6.7** Any existing apartment buildings, multi-family dwellings, etc., shall have five years from the effective date of this Regulation to be in compliance. Effective July 1,

2002, all new and existing apartment buildings, multi-family dwellings, etc., shall comply with the provisions of these Regulations.

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

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

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

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

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

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

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

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

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

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

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

Exception: Apartment or other multi-family dwellings:

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

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

Exception: Apartment or other multi-family dwellings:

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

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

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

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

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

---

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 101

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

**REGULATORY IMPLEMENTING ORDER**

**101 Delaware Student Testing Program**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 101 Delaware Student Testing Program in order to correct

section 9.2.4.2 as per the requirements of No Child Left Behind. Section 9.2.4.2 has been amended to state that “students who are granted a special exemption shall be included in the participation rate calculation”. This change aligns this regulation with 14 **DE Admin Code** 103.2.4. Amendments to this section of 14 **DE Admin. Code** 103 were approved in May 2004.

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

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 22, 2004, in the form hereto attached as *Exhibit “A”*. No comments were received.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 101 in order to bring the regulation in line with 14 **DE Admin. Code** 103 and to make technical corrections.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 101. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 101 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 101 amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 101 in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 19, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of August 2004.

### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of August 2004

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Richard M. Farmer, Jr.

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

## 101 Delaware Student Testing Program

### 1.0 Definition:

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

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education’s Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

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

### 2.0 Levels of Performance:

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

work in making the recommendation. Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education.

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

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

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

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and

can be classified as "very deficient". The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

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

**3.0 Other Indicators of Student Performance**

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

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

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

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

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

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

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

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

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

#### 4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and ~~a parent or legal guardian of the student.~~ the student's parent, guardian or Relative Caregiver.

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

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

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

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

4.5 Disputes initiated by a student's parent or legal

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

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

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

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

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

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

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

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

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

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

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

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

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

index.

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

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

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.

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

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

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

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

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

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

### **7.0 Security and Confidentiality:**

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

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

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

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

### **7.4 Procedures for Reporting Security Breaches**

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

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

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

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

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

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

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

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

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

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

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a

mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

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

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

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

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

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

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

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

## 9.0 Invalidations and Special Exemptions

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

9.1.1 Reporting of situations that occur during testing.

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

9.1.1.2 The District Test Coordinator shall

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

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

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

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

9.1.2 Consequences of invalidations.

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

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

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

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

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

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

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

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

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

9.2.3 Request for special exemptions based on emergency.

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

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

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

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on

these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

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

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

9.2.4 Consequences of Special Exemptions.

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

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

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

**5 DE Reg. 2215 (5/1/02)**

---

## **DEPARTMENT OF EDUCATION**

**14 DE Admin. Code 106, 107 & 108**

### **REGULATORY IMPLEMENTING ORDER**

- 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)
- 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)
- 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

#### **I. Summary Of The Evidence And Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to adopt 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal

System (DPAS II), 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) and 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The development of these regulations by the Department of Education was mandated in 14 **Del.C.** §1270(b). These regulations will replace the three existing regulations for the Delaware Performance Appraisal System (DPAS), 110 Teacher and Specialists Appraisal process, 112 Addendum to Teachers and Specialists Appraisal Process and 115 School level Administrator Appraisal Process on July 1, 2005. The new regulations 106, 107 and 108 have the specific component of student achievement as one of the evaluation criteria and they define a pattern of ineffectiveness for teachers, specialists and administrators. The Administrator Appraisal Process Delaware Performance Appraisal System regulation 108 includes all administrators.

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

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 22, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities and The Governor's Advisory Council for Exceptional Citizens. The comments and responses are as follows:

The Councils recommended that DOE substitute "or" for "and" since some persons may be either "licensed" or "certified". DOE has been implementing a new licensure and certification system regulated by the Professional Standards Board and the State Board of Education which requires most specialists to be both licensed and certified.

The Councils commented that the new proposal is less clear on the effective date of the pilot project. The May version clarified that the pilot project was effective July 1, 2004 which would atypically permit a teacher with a certificate for less than one year to be characterized as "experienced". The new proposal refers to the pilot project without a commencement date. Reading §1.0 together with the synopsis to the regulations it is possible that the regulations will only apply to pilot projects initiated on or after July 1, 2005. In any event, it is irregular to characterize a teacher with a certificate for less than 2 years as "experienced". Professional Status Certificates are no longer issued by the DOE as of August 1, 2003.

The Councils recommended increasing the new teacher observation time. The DOE effected no change. Council also recommended a different rating system. The DOE made some minor revisions to Section 106, §6.2. The DOE chooses to pilot the process as written and then determine if a change in the length of new teacher observation time is necessary. Data collected after the pilot will have to support any changes.

The Councils commented that he DOE may wish to reconsider §§5.2.5.1.2 and 5.2.5.1.3 in Sections 106 and 107. Literally, if students receive consistently high average scale scores, as juxtaposed to improving, the teacher would be penalized. The DOE will evaluate the criteria after a pilot.

The printing error in section 107 §5.2.5.1.2 has been corrected.

The Councils commented that the administrator appraisal includes assessment of students based on race, gender, socio-economic status, and language proficiency. The teacher and specialist assessment standards include not only these characteristics, but "special education" status as well. It would be logical to include "special education" within Section 108, §5.2.4.1.4. The omission error has been corrected.

## II. Findings of Facts

The Secretary finds that it is appropriate to adopt 14 **DE Admin. Code** 106, 107 and 108 in order to comply with the requirements of 14 **Del.C.** §1270(b).

## III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to adopt 14 **DE Admin. Code** 106, 107 and 108. Therefore, pursuant to 14 **Del C.** §122, 14 **DE Admin. Code** 106, 107 and 108 attached hereto as *Exhibit "B"* are hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106, 107 and 108 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 106, 107 and 108 adopted hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 **DE Admin. Code** 106, 107 and 108 in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on August 19, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19th day of August 2004.

**DEPARTMENT OF EDUCATION**

Valarie A. Woodruff, Secretary of Education

Approved this 19th day of August 2004.

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

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

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

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

**2.0 Definitions**

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

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

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

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

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

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

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

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

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

**“Summative Evaluation”** shall be the rating process at

the conclusion of the appraisal cycle.

**“Technical Assistance Document”** shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the 5 components of evaluation and other relevant documents that assist in the appraisal process.

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

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

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

**3.0 Appraisal Cycles**

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

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

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

**4.0 Technical Assistance Document**

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System*

(DPAS) II Technical Assistance Document as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

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

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

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

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

## **5.0 Appraisal Criteria**

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

### 5.1.1 Planning and Preparation

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

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

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

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

### 5.1.2 Classroom Environment

5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routine procedures that maximize learning time.

5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student

behavior in appropriate and effective ways to minimize disruptions.

5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-student and student-student interactions show rapport that is grounded in mutual respect.

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

### 5.1.3 Instruction

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

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

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

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

### 5.1.4 Professional Responsibilities

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

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

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

5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a

team participant, or as a school/community member with the goal of improving instruction and learning.

#### 5.1.5 Student Improvement

5.1.5.1 Showing Improvement on the DSTP: Teacher uses DSTP data analysis to inform classroom improvement, curriculum and instruction decisions.

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

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

#### 5.2.1 Planning and Preparation

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

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

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

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

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

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

#### 5.2.2 Classroom Environment

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

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

5.2.2.1.2 Encourages students in assuming responsibility for following procedures.

5.2.2.1.3 Uses transitions appropriately to maximize learning time.

5.2.2.1.4 Posts behavioral expectations and consequences in student friendly terms.

5.2.2.1.5 Monitors and responds to

behavior in effective ways that minimize disruptions.

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

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

5.2.2.1.8 Displays student work.

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

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

5.2.2.1.11 Makes resources available to all students.

#### 5.2.3 Instruction

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

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

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

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

5.2.3.1.4 Delivers coherent instruction.

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

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

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

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

5.2.3.1.9 Facilitates student-led discussions.

#### 5.2.4 Professional Responsibilities

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

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

5.2.4.1.2 Develops two-way

communication with families about student progress, behavior, and personal needs or concerns.

5.2.4.1.3 Responds to families in a timely and appropriate way.

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

5.2.4.1.5 Shares relevant student information with appropriate school personnel.

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

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

#### 5.2.5 Student Improvement

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

**[5.2.5.1.1 ~~The state progress determination pursuant to 14 DE Admin Code 103-5.0 for the school in which the teacher teaches is Meets or Above Target. If the State Progress Determination is Below Target, the teacher shall meet this requirement by meeting 5.2.5.1.2, 5.2.5.1.3, 5.2.5.1.4 and 5.2.5.1.5. The teacher provides evidence of a positive contribution of the school's State Progress Determination.]~~**

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

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

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

5.2.5.1.5 The students currently being instructed in the teacher's classroom disaggregated by race/ethnicity, LEP, special education and low income have shown improvement on classroom based assessments, provided that there were a minimum of five (5) students in a subgroup, excluding those students pursuant to 14 **Del.C** §1270(c). If there were **[less fewer]** than five (5) students in

a subgroup, the subgroup shall not be considered for these criteria.

## 6.0 Summative Evaluation Ratings

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

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

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

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

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

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

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

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

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

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| Ineffective       | Ineffective       |                   |
| Needs Improvement | Ineffective       | Needs Improvement |
| Needs Improvement | Needs Improvement | Ineffective       |
| Ineffective       | Needs Improvement | Ineffective       |
| Ineffective       | Needs Improvement | Needs Improvement |

|                   |             |             |
|-------------------|-------------|-------------|
| Needs Improvement | Ineffective | Ineffective |
|-------------------|-------------|-------------|

**8.0 Improvement Plan**

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

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

8.2 The Improvement Plan shall contain the following:

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

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

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

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

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

8.2.7 Procedures for determining satisfactory improvement.

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

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

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

**9.0 Evaluator Credentials**

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

9.2 The training for the certificate of completion shall

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

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

**10.0 Challenge Process**

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

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

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

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

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

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

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

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

**2.0 Definitions**

“Announced Observation” shall consist of the Pre-Observation Form and conference with the evaluator, an

observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.0 Appraisal Cycles**

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

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

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

### **4.0 Technical Assistance Document**

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

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

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

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

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

**5.0 Appraisal Criteria**

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

**5.1.1 Planning and Preparation**

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

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

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

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

**5.1.2 Professional Practice and Delivery of Services**

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

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

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

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

**5.1.3 Professional Collaboration and Consultation**

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

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

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

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

**5.1.4 Professional Responsibilities**

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

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

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

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

**5.1.5 Student Improvement**

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

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

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

**5.2.1 Planning and Preparation**

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

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

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

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

**5.2.1.1.4 Selects appropriate resources, either within or outside of the school, that support**

the goals of the program.

#### 5.2.2 Professional Practice and Delivery of Services

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

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

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

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

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

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

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

5.2.2.1.7 Delivers coherent services.

#### 5.2.3 Professional Collaboration and Consultation

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

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

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

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

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

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

#### 5.2.4 Professional Responsibilities

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

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

5.2.4.1.2 Develops two-way

communication with school staff and families about student progress, behavior, personal needs, or concerns.

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

5.2.4.1.4 Shares information with appropriate school personnel.

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

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

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

#### 5.2.5 Student Improvement

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

**[5.2.5.1.1 ~~The state progress determination pursuant to 14 DE Admin Code 103 5.0 for the school in which the specialist serves is Meets or Above Target. If the State Progress Determination is Below Target, the teacher shall meet this requirement by meeting 5.2.5.1.2, 5.2.5.1.3, 5.2.5.1.4. The specialist can demonstrate specific contributions to students and/or staff which contribute to improvement in the school or district's State Progress Determination.]~~**

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

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

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

### **6.0 Summative Evaluation Ratings**

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

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

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

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

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

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

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

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

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

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| Ineffective       | Ineffective       |                   |
| Needs Improvement | Ineffective       | Needs Improvement |
| Needs Improvement | Needs Improvement | Ineffective       |
| Ineffective       | Needs Improvement | Ineffective       |
| Ineffective       | Needs Improvement | Needs Improvement |
| Needs Improvement | Ineffective       | Ineffective       |

**8.0 Improvement Plan**

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

Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a specialist’s performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing “PERFORMANCE IS UNSATISFACTORY” and initialing the statement.

8.2 The Improvement Plan shall contain the following:

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

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

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

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

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

8.2.7 Procedures for determining satisfactory improvement.

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

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

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

**9.0 Evaluator Credentials**

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

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

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

**10.0 Challenge Process**

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

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

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

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

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

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

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

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

**2.0 Definitions**

"Board" shall mean the local board of education or charter school board of directors.

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

"DPAS" shall mean the Delaware Performance Appraisal System in effect prior to ~~July 1, 2005~~ DPAS II].

"Experienced Administrator" shall mean an administrator who has three (3) or more years of service as

an administrator.

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

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

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

"Satisfactory Component Rating" shall mean the administrator understands the concepts of the component and the administrator's performance in that component is acceptable.

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

"Summative Evaluation" shall be the rating component at the conclusion of the appraisal cycle.

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

"Unsatisfactory Component Rating" shall mean the administrator does not understand the concepts of the component and the administrator's performance in that component is not acceptable.

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

**3.0 Appraisal Cycles**

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

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

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

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

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

4.1.1 The Document shall contain at a minimum the following:

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

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

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

#### **5.0 Appraisal Criteria**

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

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

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

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

5.1.4 Assessment on Measures of Student Improvement:

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

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

learning across all content areas.

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

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

5.2.1 Assessment of Leader Standards:

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

5.2.2 Assessment of Goals and Priorities:

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

5.2.3 Assessment on the School or District Improvement Plan:

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

5.2.4 Assessment on Measures of Student Improvement:

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

5.2.4.1.1 DSTP results show student performance has improved.

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

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

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

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

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

5.2.4.1.7 There is improvement on student attendance or graduation rates.

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

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

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

6.2.1 Effective shall mean that the administrator has received Satisfactory Component ratings in all four (4) components of the appraisal criteria.

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

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

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

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

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

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

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| Ineffective       | Ineffective       |                   |
| Needs Improvement | Ineffective       | Needs Improvement |
| Needs Improvement | Needs Improvement | Ineffective       |
| Ineffective       | Needs Improvement | Needs Improvement |
| Ineffective       | Needs Improvement | Ineffective       |
| Needs Improvement | Ineffective       | Ineffective       |

## **8.0 Improvement Plan**

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

regardless of the overall rating.

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

8.2 The Improvement Plan shall contain the following:

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

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

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

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

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

8.2.7 Procedures for determining satisfactory improvement.

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

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

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

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

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

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

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

## **10.0 Challenge Process**

10.1 An administrator may challenge any rating on

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

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

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

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

---

## **DEPARTMENT OF EDUCATION**

### **14 DE Admin. Code 501**

#### **REGULATORY IMPLEMENTING ORDER**

##### **501 State Content Standards**

### **I. Summary of the Evidence and Information Submitted**

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

The No Child Left Behind Act (NCLB) allows students in the alternate assessment to have different access points to the academic content standards. Existing performance indicators within the Delaware content standards do not

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

Notice of the proposed regulation was published in the News Journal and the Delaware State News on June 22, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The comments received from the Councils were primarily concerned either with the way the DAPA is used to assess children with the most significant disabilities, not to the changes in the Content Standards themselves or with the legal requirements that children with the most significant disabilities have access to the same curriculum as children without disabilities and that they be included in the assessment system used for all children. The DOE has concluded that the current regulatory changes are necessary to comply with federal requirements in a manner that promotes quality programming and meaningful progress for children with significant disabilities.

### **II. Findings Of Facts**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 501 in order to remove the reference to the Standards for Functional Life Skills Curriculum in 1.1 because federal regulations no longer allow the use of separate functional standards that are aligned to academic content standards.

### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 501. Therefore, pursuant to 14 **Del.C** §122, 14 **DE Admin. Code** 501 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 501 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### **IV. Text and Citation**

The text of 14 **DE Admin. Code** 501 amended hereby

shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code 501** in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C. §122** on August 19, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 19<sup>th</sup> day of August 2004.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 19th day of August 2004

#### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Richard M. Farmer, Jr.

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

#### 501 State Content Standards

##### 1.0 Instructional Programs

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

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

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

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

#### PROFESSIONAL STANDARDS BOARD

14 **DE Admin. Code 1509**

#### REGULATORY IMPLEMENTING ORDER

#### 1509 Meritorious New Teacher Candidate Designation

##### I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code 1509** Meritorious New Teacher Candidate Designation. This regulation applies to designating new teachers who meet criteria developed by the Mid Atlantic Regional Teachers Project as Meritorious New Teacher Candidates. This designation will be affixed to the new teacher's Initial License, issued pursuant to 14 **DE Admin. Code 1510**.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on April 20, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

##### II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with permit the issuance of the Meritorious New Teacher Candidate Designation.

##### III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C. §1205(b)**, the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C. §122(e)**, the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

##### IV. Text And Citation

The text of the regulation amended shall be in the form

attached hereto as Exhibit “B”, and said regulation shall be cited as 14 **DE Admin. Code** 1509 of the *Administrative Code of Regulations* of the Department of Education.

**V. Effective Date Of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

Approved By The Professional Standards Board the 5<sup>th</sup> Day Of August, 2004

|                       |                      |
|-----------------------|----------------------|
| Harold Roberts, Chair | Valerie Hoffman      |
| Sharon Brittingham    | Carla Lawson         |
| Heath Chasanov        | Mary Mirabeau        |
| Norman Brown          | Leslie Holden        |
| Edward Czerwinski     | Karen Schilling Ross |
| Karen Gordon          | Carol Vukelich       |
| Barbara Grogg         | Gretchen Pikus       |
| Bruce Harter          | Angela Dunmore       |

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 19th Day Of August, 2004

**STATE BOARD OF EDUCATION**

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Valarie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

**1509 Meritorious New Teacher Candidate Designation**

**1.0 Content.**

1.1 This regulation shall apply to the issuance of a Meritorious New Teacher Candidate Designation to a candidate for an initial license who meets the criteria set forth by the Mid-Atlantic Regional Teachers Project., pursuant to 14 Del.C. §1210.

**2.0 Definitions.**

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

“Department” means the Delaware Department of Education.

“License” means a credential which authorizes the

holder to engage in the practice for which the license is issued.

“Meritorious New Teacher Candidate Designation” means a designation of excellence for new teachers which enables them to teach in Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia.

“Met the Highest Standard” means achieved the highest grade or score awarded by the institution.

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

3.0 An applicant for an initial license who meets the requirements for an initial license and who also meets the criteria set forth by the Mid-Atlantic Regional Teachers Project shall have a Meritorious New Teacher Candidate Designation affixed to the Initial License, upon receipt of a recommendation from the candidate’s teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.

3.1 Criteria for the Meritorious New Teacher Candidate Designation are:

3.1.1 Verbal Skills:

3.1.1.1 Scores in the upper quartile of students nationally at the time the test was taken on the verbal portion of the SAT, ACT, or GRE.

3.1.2 Content Knowledge:

3.1.2.1 Elementary Education (Grades preK-6):

3.1.2.1.1 A minimum 3.5 cumulative GPA in an undergraduate professional education program, or a minimum 3.7 cumulative GPA in a graduate professional education program; and

3.1.2.1.2 Scores in the upper quartile of students nationally at the time the test was taken in math, science, social studies, and English/language arts in the PRAXIS II Content Knowledge for Elementary Teachers test or Elementary Education: Curriculum, Instruction, and Assessment test.

3.1.2.2 Middle School Education (Grades 6 – 8):

3.1.2.2.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought; and

3.1.2.2.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant’s specialty area.

3.1.2.3 Secondary Education (Grades 9 – 12):

3.1.2.3.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought.

3.1.2.3.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant's specialty area.

3.1.3 Professional Preparation and Recommendation:

3.1.3.1 Completion of a state-approved teacher preparation program, of traditional or alternative format, with a minimum 3.5 cumulative GPA in an undergraduate professional studies program, or a minimum 3.7 cumulative GPA in a graduate professional education program.

3.1.3.2 Completion of a minimum of 400 hours of supervised clinical experience, of which at least 300 hours are directed instructional student teaching. Clinical experience may occur within any state-approved model, including total immersion experiences as teachers of record.

3.1.3.3 Met the highest standard of both the university supervisor and the cooperating teacher on the institution's formal student teacher or immersion component of the required clinical experience.

3.1.3.4 Met the highest standard on the institution's professional preparation assessment.

3.1.3.5 Received a recommendation by the teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.

4.0 Applicants for initial licensure and the Meritorious New Teacher Candidate Designation who completed teacher preparation in Delaware will be given expedited consideration of their application a by the Delaware Department of Education.

5.0 A Meritorious New Teacher Candidate Designation issued to a licensee from one of the participating jurisdictions who has less than three (3) years of teaching experience, shall be honored by the Department. The applicant shall be issued a Delaware Initial License pursuant to 14 DE Admin. Code §1510 with a Meritorious New Teacher Candidate Designation and any Delaware Standard Certificate for which the candidate qualifies.

6.0 This designation shall be valid for the duration of the individual's Initial License.

## PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 1577

### REGULATORY IMPLEMENTING ORDER

#### 1577 Standard Certificate – School Psychologist

##### I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 368 Certification School Psychologist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation to align it with current statute and regulations concerning licensing and certification of educators and to align it with standards set forth for school psychologists by the National Association of School Psychologists and the American Psychological Association. The regulation will be renumbered 1577 to reflect its movement to the Professional Standards Board section of the Department of Education regulations and will be renamed Standard Certificate - School Psychologist to make it consistent with the nomenclature of other Standard Certificate regulations.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on June 24, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comment was received from the State Council for Persons with Disabilities, the Governor's Advisory Council for Exceptional Children, and the Delaware Psychological Association objecting to an individual with only a bachelor's degree being permitted to serve as a school psychologist, questioning the definition of "school setting", and questioning the requirement for an internship in a school setting for a Delaware licensed psychologist. The regulation does not permit a school psychologist to practice with only a bachelor's degree. The definition of school setting does not limit the setting for an internship to exclude hospitals, therapeutic residential settings, and the like. A licensed clinical psychologist must have competencies in school curriculum and assessment and in strategies for modifying curriculum or the setting for students. For this reason, an internship in a school setting is required for those clinical psychologists who cannot demonstrate those competencies. Written responses have been prepared for the organizations. In response to the comments received from the State Council for Persons with Disabilities and the Governors' Advisory Council for Exceptional Children, a clarification in the definition of "school setting" has been made. One minor

change recommended by the School Psychology department at the University of Delaware has been made.

## II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with permit the issuance of the Meritorious New Teacher Candidate Designation.

## III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1577 of the *Administrative Code of Regulations* of the Department of Education.

## V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

Approved By The Professional Standards Board the 5<sup>th</sup> Day Of August, 2004

|                       |                      |
|-----------------------|----------------------|
| Harold Roberts, Chair | Valerie Hoffman      |
| Sharon Brittingham    | Carla Lawson         |
| Heath Chasanov        | Mary Mirabeau        |
| Norman Brown          | Leslie Holden        |
| Edward Czerwinski     | Karen Schilling Ross |
| Karen Gordon          | Carol Vukelich       |
| Barbara Grogg         | Gretchen Pikus       |
| Bruce Harter          | Angela Dunmore       |

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 19th Day Of August, 2004

## STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

## ~~368—Certification School Psychologist~~ ~~Effective July 1,1993~~

~~1.0 The following shall be required for the Standard License.~~

~~1.1 A graduate degree (Master's, Educational Specialist, Ph.D., Psy.D., or Ed.D. from an NCATE, NASDTEC, or American Psychological Association accredited school psychology program) that requires a minimum of 60 graduate semester hours consisting of course work, practica, and internship, or holds National School Psychology Certification granted by the National School Psychology Certification Board or;~~

~~1.2 A minimum of 60 graduate semester hours (including at least a Master's degree from an accredited college) distributed as specified across the following eight categories of course work and experiences. The course work experiences should provide evidence of the ability to acquire, integrate, and express factual and theoretical information, and the ability to make inferences, interpretations, and conclusions from conceptual and experimental research of applications in each of the skill areas represented by the categories below:~~

~~1.2.1 Nine graduate semester hours in psychological foundations covering the following skill areas: Child and Adolescent Development, Human Learning, Child Psychopathology, Human Exceptionalities, Social Bases of Behavior, Biological Bases of Behavior, Cultural Diversity.~~

~~1.2.2 Twelve graduate semester hours in assessment covering the administration and interpretation of assessments in each of the areas of Intelligence Testing, Personality Assessment, Behavioral Assessment; and Psycho-Educational Assessment.~~

~~1.2.3 Six graduate semester hours in research, design, statistics and measurement covering the areas of Research Design, Statistics, and Test and Measurement.~~

~~1.2.4 Nine graduate semester hours in intervention techniques covering the areas of Counseling, Consultation, Behavior Management; and Curriculum Development or Remedial/Special Education Techniques.~~

~~1.2.5 Six graduate semester hours in educational foundations covering the areas of Education of Exceptional Learners, Instruction and Remedial Techniques, Organization/Operation of Schools; and Foundations of~~

## Education.

1.2.6 Three graduate semester hours in professional school psychology including the areas of History/Foundations of School Psychology, Related Legal/Ethical Issues; and Professional Issues/Standards.

1.2.7 Three graduate semester hours of electives in psychology/related areas.

1.2.8 Twelve graduate semester hours of an internship.

1.2.8.1 Twelve hundred (1,200) clock hours – 100 clock hours per semester hour – of supervised, on-site field experience. At least 600 clock hours (6 semester hours) of the internship must be served in a school setting under the supervision of a licensed or certified school psychologist. No more than 600 of the required clock hours may be completed in a non-school setting. Supervision in a non-school setting must be provided by personnel holding an appropriate credential for that setting. The internship experience cannot begin until all other course requirements are completed and verified.

2.0 The following shall be required for the Limited Standard License (not renewable).

2.1 The Limited Standard License may be issued for a period not exceeding three years at the request of a Delaware Public School district to a person who meets the requirements listed below and who is employed as a School Psychologist to allow for the completion of the requirements for the professional License as listed in 1.0.

2.1.1 Master's (or more advanced) degree from an accredited college and;

2.1.2 Specific Requirements

2.1.2.1 Within nine semester hours of meeting course work as required in 1.2.1 through 1.2.7 and with a completed internship or related experience.

3.0 The following shall be required for a Temporary License (not renewable).

3.1 The Temporary License may be issued for a period of one year at the request of a Delaware Public School District to a person who meets the requirements listed below, and who is employed as a School Psychologist to allow for the completion of the requirements for the Standard License as listed in 1.0.

3.1.1 Master's (or more advanced) degree from an accredited college and;

3.1.2 Specific Requirements

3.1.2.1 With the completion of all required course work, but not the required internship, one year of successful, full-time work experience under the supervision of an approved internship supervisor, in a position covered by this License, can be approved to satisfy the internship experience.

4.0 Licenses that may be issued for this position include Standard, Limited Standard and Temporary.

**1577 Standard Certificate – School Psychologist**

**1.0 Content.**

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for School Psychologist.

**2.0 Definitions.**

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

**“Department”** means the Delaware Department of Education.

**“Internship”** means a supervised, culminating, comprehensive field experience, completed at or near, the end of formal training, through which school psychology candidates have the opportunity to integrate and apply professional knowledge and skills acquired in prior courses and practica, as well as to acquire new competencies consistent with training program goals.

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

**“School Setting”** means a setting in which [educational services are provided to children the primary goal is the education of students] of diverse backgrounds, characteristics, abilities, disabilities, and needs [who are enrolled in grades pK-12, age birth through 20 years inclusive, provided such setting is approved by the appropriate local governmental authority.]

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

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

3.1 A bachelor's degree in any content area from a regionally accredited college or university; and

3.2 Completion of an organized graduate level program of study approved by the National Association of School Psychologists (NASP) or the American Psychological Association (APA) offered by a regionally accredited college or university titled “School Psychology”, consisting of a minimum of 60 graduate level credit hours, of which at least 54 credits are exclusive of an internship; and

3.2.1 A supervised internship of no less than

1200 hours, completed at or near the end of the program, completed either full-time or half-time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting; or

3.3 Completion of an organized graduate level program of study offered by a regionally accredited college or university titled "School Psychology", consisting of a minimum of 60 graduate level credit hours, of which at least 54 credits are exclusive of an internship; and

3.3.1 Evidence of substantial graduate-level preparation in the following areas. Substantial preparation may be acquired through one or more courses devoted specifically to an area, or significant portions of one or more courses. Candidates may be required to provide additional documentation to demonstrate such preparation.

3.3.1.1 Data-based Decision-Making and Accountability: Coursework and practicum/internship experiences that demonstrate knowledge and skills on the use of various models and methods of assessment that yield information for identifying strengths and needs, understanding problems, identifying disabilities, and measuring progress and accomplishments;

3.3.1.2 Consultation and Collaboration: Coursework and practicum/internship experiences that demonstrate knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and their application to planning and decision-making processes at the individual, group, and system levels.;

3.3.1.3 Effective Instruction and Development of Cognitive/Academic Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills. Coursework in this area includes but is not limited to development of instructional interventions.;

3.3.1.4 Socialization and Development of Life Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills. Coursework in this area includes behavioral assessment/intervention, and counseling.;

3.3.1.5 School and Systems Organization, Policy Development, and Climate: Coursework and practicum/internship experiences that demonstrate knowledge of policies and practices in general education, special education, and other educational and related services systems. Coursework in this area includes attention to the development of policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.;

3.3.1.6 Prevention, Crisis Intervention, and

Mental Health: Coursework and practicum/internship experiences that demonstrate knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Coursework in this area includes promotion of student mental health and knowledge of crisis intervention procedures;

3.3.1.7 Home/School/Community

Collaboration: Coursework and practicum/ internship experiences that demonstrate knowledge of family systems, including family strengths and influences on student development, learning, and behavior; and of methods to involve families in education and service delivery;

3.3.1.8 Research and Program Evaluation: Coursework and practicum/ internship experiences that demonstrate knowledge of research, statistics, and evaluation methods. Coursework in this area includes content related to evaluating research, translating research into practice, and understanding research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services;

3.3.1.9 School Psychology Practice and Development: Coursework and practicum/internship experiences that demonstrate knowledge of the history and foundations of the profession of school psychology; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards;

3.3.1.10 Student Diversity in Development and Learning: Coursework and practicum/internship experiences that demonstrate knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; and

3.3.1.11 Information Technology: Coursework and practicum/internship experiences that demonstrate knowledge of information sources and technology relevant to their work, including the ability to access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services; and

3.3.2 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full-time or half-time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting; or

3.4 A valid certificate from the National School Psychology Certification Board (NCSP); or

3.5 A valid certificate in school psychology from another State Department of Education in the U.S.; or

3.6 A valid license as a psychologist issued by the Delaware Board of Examiners of Psychologists, and

3.6.1 Evidence of substantial graduate-level

preparation in the following areas. Substantial preparation may be acquired through one or more courses devoted specifically to an area, or significant portions of one or more courses. Candidates may be required to provide additional documentation to demonstrate such preparation.

3.6.1.1 Data-based Decision-Making and Accountability: Coursework and practicum/internship experiences that demonstrate knowledge and skills on the use of various models and methods of assessment that yield information for identifying strengths and needs, understanding problems, identifying disabilities, and measuring progress and accomplishments;

3.6.1.2 Consultation and Collaboration: Coursework and practicum/ internship experiences that demonstrate knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to planning and decision-making processes at the individual, group, and system levels;

3.6.1.3 Effective Instruction and Development of Cognitive/Academic Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills. Coursework in this area includes development of instructional interventions;

3.6.1.4 Socialization and Development of Life Skills: Coursework and practicum/internship experiences that demonstrate knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills. Coursework in this area includes behavioral assessment/intervention, and counseling;

3.6.1.5 School and Systems Organization, Policy Development, and Climate: Coursework and practicum/internship experiences that demonstrate knowledge of policies and practices in general education, special education, and other educational and related services systems. Coursework in this area includes attention to the development of policies and practices that create and maintain safe, supportive, and effective learning environments for children and others;

3.6.1.6 Prevention, Crisis Intervention, and Mental Health: Coursework and practicum/internship experiences that demonstrate knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior. Coursework in this area includes promotion of student mental health and knowledge of crisis intervention procedures;

3.6.1.7 Home/School/Community Collaboration: Coursework and practicum/internship experiences that demonstrate knowledge of family systems,

including family strengths and influences on student development, learning, and behavior; and of methods to involve families in education and service delivery;

3.6.1.8 Research and Program Evaluation: Coursework and practicum/internship experiences that demonstrate knowledge of research, statistics, and evaluation methods. Coursework in this area includes content related to evaluating research, translating research into practice, and understanding research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services;

3.6.1.9 School Psychology Practice and Development: Coursework and practicum/internship experiences that demonstrate knowledge of the history and foundations of the profession of school psychology; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards;

3.6.1.10 Student Diversity in Development and Learning: Coursework and practicum/internship experiences that demonstrate knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; and

3.6.1.11 Information Technology: Coursework and practicum/internship experiences that demonstrate knowledge of information sources and technology relevant to their work, including the ability to access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services; and-

3.6.2 A supervised internship of no less than 1200 hours, completed at or near the end of the program, completed either full-time or half-time over a period of no more than two consecutive years, at least 600 hours of which must be in a school setting. Applicants who meet all of the requirements above except 600 hours of internship in a school setting may complete the school-based internship requirements under an emergency certificate.

#### **4.0 Internship.**

4.1 An internship must be in an institution or agency approved by the DOE or the applicant's graduate program. The internship placement agency provides appropriate support for the internship experience including:

4.1.1 A written agreement specifying the period of appointment and any terms of compensation;

4.1.2 A schedule of appointments, expense reimbursement, a safe and secure work environment, adequate office space, and support services consistent with that afforded to school psychologists employed by the approved internship institution or agency;

4.1.3 Provision for participation in continuing

professional development activities:

4.1.4 Release time for internship supervision:  
and

4.1.5 A commitment to the internship as a diversified training experience.

4.2 An internship must be supervised by a certified school psychologist or state licensed psychologist who has a minimum of three (3) years experience as a practicing school psychologist and who has experienced an internship.

4.3 A licensed psychologist completing the school-based portion of the internship may be employed as a school psychologist concurrent with completion of the internship. [A minimum of two (2) hours per week of supervision is required.]

### **5.0 Emergency Certificate**

5.1 An Emergency Certificate for a School Psychologist may only be granted to a candidate who has completed all required course work and has been accepted into a school-based internship.

---

## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(c) (16 **Del.C.** §122(3)(c))

### **ORDER**

#### **Nature Of The Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt State of Delaware **Regulations for the Licensing and Registration of Operators of Public Water Supply Systems**. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Del.C.** Chapter 101 and authority as prescribed by 16 **Del.C.** 122 §(3)c.

On July 1, 2004 (Volume 8, Issue 1), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 **Del.C.** §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by July 30, 2004, or be presented at a public hearing on July 28, 2004, 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, 2004 through July 30, 2004. 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 proposed State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems are adopted and shall become effective September 10, 2004, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary, 8/13/04

### **463 Licensing And Registration Of Operators Of Public Water Supply Systems**

#### **1.0 Purpose**

It is the purpose of this regulation to protect the public health and to provide for the development and protection of the potable water supply systems of this State; to provide for the classification of public water systems; to require the licensing of operators of these systems; to provide procedures for such licensing and registration; to create an Advisory Council for Certification; to provide for reciprocal arrangements; and to prescribe penalties for violation of this regulation.

#### **2.0 Definitions**

**"Acceptable Experience"** means active, on-site charge and/or performance of operation of a treatment plant and/or distribution system of a public water supply and would include such activities as treatment plant startup and hands-on (in the field) operator training. "Hands-on" means the applicant has been actually operating a water treatment plant and/or working on the distribution system, has performed routine tests, collected samples, completed operational reports, etc. It means that the knowledge possessed was, at least in part, gathered from daily operating experience, not merely from textbook study.

**"Advisory Council"** means Advisory Council for Certification of Public Water System Operators, as established by this regulation.

**"Base Level License"** means a water treatment and/or distribution license in which the following information is covered: general water system information; disinfection by hypochlorination; and distribution operation and maintenance for water supply systems having a flow of less than five hundred (500) gpm at twenty (20) psi.

**"Circuit Rider"** means a certified water operator who

operates and/or is the direct-responsible-charge (DRC) for more than one (1) public water system.

**“Combined Treatment/Distribution System”** means any water supply system which is composed of a water treatment facility ~~as defined in “Water Supplier”~~ together with a water distribution system as defined in this section.

**“Continuing Education Unit (CEU)”** means a measure of professional, educational training, where one (1) CEU is equal to ten (10) hours of classroom and/or laboratory training.

**“Department”** means Delaware Health and Social Services.

**“Direct-Responsible-Charge (DRC)”** means certified water system operator(s) assigned ~~accountability for performance of active, on-site operational duties~~ active daily technical direction and supervision or active daily accountability for process control decisions of a facility or a major segment of a facility that directly impacts public health or the environment.

**“Director”** means Director of the Division of Public Health or his/her duly authorized designee.

**“Division”** means Division of Public Health.

**“Educational Contact Hour”** means the amount of time spent at a water operators or water distribution operators training course, after initial certification, not including travel time or lodging time. For purposes of these Regulations, the initial base certification course does not qualify as educational contact hours and one (1) hour of time spent in a training course is equal to one (1) educational contact hour.

**“Endorsement”** means any water treatment operation as listed in Section 5.2.1 which is over and above the base level license as defined in ~~“Base Level Service”~~ this section.

**“Operator”** ~~means a licensed person who works in a water treatment facility and/or a water distribution system who may be a DRC or may work under a DRC.~~ Means the individual who has responsibility for the operation of a water treatment plant or water distribution system and any individual who normally has charge of an operating shift, or who performs process control decisions including analytical control.

**“Person”** means any individual, partnership, firm, association, joint venture, public or private corporation, trust, state commission, Advisory Council, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, or any other legal entity.

**“Process Control Decision”** means a decision that maintains or changes the water quality or quantity of a water system in a manner that may affect the public health or the environment.

**“Public Water System”** means a water supply system for the provision to the public of water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing

outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes for consumption in more than three dwelling units, or furnishes water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings, including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, camps of all types, day and boarding schools, clubhouses, hospitals and other institutions, or offers any water for sale for potable or domestic purposes. Public water systems are classified as follows:

**“Community Water System (CWS)”** means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents;

**“Non-Transient Non-Community Water System (NTNCWS)”** means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year;

**“Non-Community Water System (NCWS)”** means a public water system which has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year;

**“Miscellaneous Public Water System (MPWS)”** means a public water system that is neither community, non-community nor non-transient non-community.

**“Secretary, Delaware Health and Social Services”** means the Administrator of the Department of Health and Social Services of the State of Delaware as defined in Title 29, Section (b), Delaware Code or his/her duly authorized designee.

**“Water Distribution System”** means that portion of the water supply system in which water is stored and conveyed from a water treatment plant, groundwater well, or other supply point to the free-flowing outlet of the ultimate consumer.

**“Water Supplier”** means any person who owns, operates, or manages a public water system.

**“Water Supply System”** means the work and auxiliaries for collection, treatment, storage, and distribution of water from the source of supply to the free-flowing outlet of the ultimate consumer.

**“Water Treatment”** means any process which is meant to alter the physical, chemical or bacteriological quality of the water.

**“Water Treatment Facility”** means that portion of the water supply system which is meant to alter the physical, chemical, or bacteriological quality of the water being treated.

**3.0 Advisory Council For Certification Of Public Water System Operators**

3.1 An Advisory Council for Certification of Public Water System Operators shall be appointed by the Secretary, Delaware Health and Social Services to advise and assist the Secretary in the administration of this regulation. The Advisory Council shall hold at least quarterly meetings each calendar year and such special meetings as it deems necessary.

**3.2 Membership:**

3.2.1 The Advisory Council will consist of a minimum of nine (9) members and with the following representation:

3.2.1.1 one (1) member representing the Division of Public Health who shall serve as Advisory Council Secretary/Treasurer, responsible for maintaining all appropriate records and conducting the daily business of the Advisory Council.

3.2.1.2 three (3) members representing the general public

3.2.1.3 two (2) representatives from local government agencies with managerial responsibility for water treatment and/or water distribution in a public water system with the following representation:

3.2.1.3.1 one (1) member representing a local government agency having a population greater than or equal to 10,001 and;

3.2.1.3.2 one (1) member representing a local government agency having a population less than or equal to 10,000

3.2.1.4 one (1) member representing business or industry

3.2.1.5 one (1) member representing a public water utility.

3.2.1.6 one (1) member holding a valid water operator's license, or who is eligible to be licensed under this regulation.

3.2.2 Advisory Council members will serve a five (5) year term with the right to resign at their request or until such time as a re-appointment or a replacement appointment is made.

3.2.2.1 Initially one (1) member will be appointed for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, two (2) for a term of four (4) years and two (2) for a term of five (5) years.

3.2.2.2 The Division representative will serve an unlimited term at the discretion of the Secretary.

3.2.3 Advisory Council appointees shall represent all counties of the State, with at least one (1) member each from New Castle, Kent and Sussex Counties.

3.2.4 The Secretary may remove any member of the Advisory Council for misconduct, incapacity, or neglect of duty, and shall be the sole judge of the sufficiency of the case for removal.

3.2.5 The Secretary shall fill any vacancy. Such an interim appointment shall be for the duration of the term.

**3.3 Responsibility and Authority:**

3.3.1 The Advisory Council, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation. These procedures and guidelines shall include but not be limited to the following:

3.3.1.1 procedures for examination of candidates and the granting of licenses;

3.3.1.2 procedures for the renewal of licenses;

3.3.1.3 procedures for the suspension, revocation and failure to renew licenses;

3.3.1.4 guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;

3.3.1.5 guidelines for evaluating equivalency of other licensing and certification programs for the purpose of according reciprocal treatment.

3.3.1.6 procedures for the collection and disbursement of fees.

3.3.2 The Advisory Council shall possess the necessary authority as delegated by the Secretary to carry out all activities required for the proper administration of this regulation. Such authority includes:

3.3.2.1 the development of rules and regulations, to be adopted by the Secretary, concerning the licensing of operators of public water systems;

3.3.2.2 establishing the method of examination for each license applicant, including preparation, administration, and grading of examinations;

3.3.2.3 the recommendation to the Secretary regarding the issuance and renewal of licenses;

3.3.2.4 the recommendation of disciplinary sanctions to the Secretary on operators who violate Section 10 of this regulation.

**4.0 License Requirements For Public Supply Water Systems****4.1 Water Supply Treatment Facilities**

4.1.1 Two years following the effective date of this regulation, any public water supply system treatment facility must be under the direct-responsible-charge of a person possessing a valid base level water operator's license, defined in Section 2.0 of these regulations, and all applicable endorsements, if any, for the treatment facility to be operated.

**4.2 Water Supply Treatment Facility Operators**

4.2.1 Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible-charge (DRC) and/or operate any public water supply system treatment facility unless said person possesses a valid base level water operator's license

and applicable endorsements, if any, for the treatment facility to be operated.

#### 4.3 Water Supply Distribution Systems

4.3.1 Two years following the effective date of this regulation, any public water distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

#### 4.4 Water Supply Distribution System Operators

4.4.1 Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible charge (DRC) and/or operate any public water supply distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), unless said person possesses a valid base level water operator's license and, at a minimum, a distribution endorsement.

#### 4.5 Combined Treatment/Distribution Supply Systems

4.5.1 The license requirements stipulated in 4.1 and 4.3 apply separately and equally to both the water supply treatment facility operator and the water supply distribution facility operator of a combined treatment/distribution supply system.

4.5.2 Any water supply treatment facility which is part of a combined public water treatment/distribution system must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and all applicable endorsements, as defined by the Division, if any, for the treatment facility to be operated.

4.5.3 Any water supply distribution system which is part of a combined public water treatment/distribution system and is capable of producing greater than five hundred (500) gpm at twenty (20) psi must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.5.4 The requirement of a distribution endorsement as stated in Section 4.5.3 may be waived if the owner can demonstrate to the Division that all distribution system operation and maintenance is contracted out to another licensed operator.

#### 4.6 Notification to Division of Public Health

4.6.1 Within twenty-six (26) months of the effective date of this regulation, any owner of a public water supply system treatment facility, distribution system, or combined treatment/distribution system must provide to the Division a list of all persons in direct-responsible-charge and all operators who have been duly licensed under these regulations. Further, the owner must notify the Division in writing of any additions, deletions, or other changes in the number of licensed direct-responsible-charges ~~or operators~~ within thirty (30) days of such change. The notification

must include the name and license number of the new DRC.

#### 4.7 Temporary Variance

4.7.1 A temporary variance from the license requirements provided in Sections 4.1, 4.3 and 4.5 of this regulation may be granted by the Secretary, upon recommendation by the Advisory Council, to the owner of a public water system treatment facility, distribution system, or combined treatment/distribution system, when it is demonstrated to the satisfaction of the Advisory Council that the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such temporary variance may be issued with any special conditions or requirements deemed necessary to assure the protection of the public health.

4.7.2 Notification of the unexpected loss of a licensed operator must be sent to the Advisory Council by the owner within thirty (30) days pursuant to 4.6 of this regulation. Application for a temporary variance must be made to the Advisory Council on forms provided by the Advisory Council no later than thirty (30) days following such initial notification. After thorough review of the application and any other information required by the Advisory Council as being pertinent to the issuance of a temporary variance, the Advisory Council shall make a recommendation to the Secretary. The Secretary notifies the applicant in writing of his/her decision to approve or deny the temporary variance.

4.7.3 A temporary variance shall be valid only for that facility or system for which issued, and for a period of time as specified by the Secretary, but which shall not exceed six (6) months.

#### 4.7.4 Extension of Temporary Variance

4.7.4.1 When it is demonstrated to the satisfaction of the Secretary that the owner holding a temporary variance has continued to act in good faith in attempting to hire a licensed operator but is unable to do so, one (1) extension of the original variance may be granted at the discretion of the Secretary, upon recommendation by the Advisory Council, for a period of time not to exceed six (6) months. Requests for an extension of a temporary variance must be made to the Advisory Council in writing no later than one (1) month prior to the expiration date of the original variance.

### 5.0 Classification Of Public Water Systems

5.1 The Division of Public Health shall classify all public water systems in accordance with the criteria hereby established.

#### 5.2 Water Supply Facilities

5.2.1 Public water system supply facilities shall be classified according to the treatment process(es) it operates. General treatment processes shall be grouped into categories hereby called endorsements. Within each endorsement shall be specific unit processes, hereby called

endorsement sub-categories, see appendix A for a list of these endorsements and endorsement sub-categories. The Division will specify which endorsements and endorsement sub-categories a public water system needs based upon the most recent sanitary survey conducted by the Division. The list of endorsements is as follows:

- 5.2.1.1 Disinfection
- 5.2.1.2 Chemical Feed
- 5.2.1.3 Filtration
- 5.2.1.4 Surface Water Operations
- 5.2.1.5 Other Specified Treatment
- 5.2.1.6 Distribution

5.2.2 The Advisory Council shall amend Appendix A as is necessitated by the creation of new treatment technologies.

5.2.3 In the event of an emergency, such as source water contamination, in which a treatment process is required to protect the public's immediate health and which the DRC and/or operator is currently not licensed for, an emergency endorsement may be added to the DRC's and/or operator's license provided that prior approval, by the Division, is granted. This emergency endorsement shall be issued for a period not to exceed one (1) year, without the express written consent of the Secretary. The operator must pass the appropriate endorsement test within the one-year period of the emergency endorsement.

**6.0 License Classification And Operator Qualifications**

**6.1 License Classification**

6.1.1 One (1) regular water supply operator license class is hereby established:

6.1.1.1 Base Level Water Supply Operator with all applicable endorsements as stated in Section 5.2.1.

6.1.2 ~~Three (3)~~ Two (2) specialty class licenses are also established:

6.1.2.1 Water Supply Operator-in-Training (OIT)

~~6.1.2.2 Circuit Rider~~

6.1.2.3.2 Grandfather Clause

**6.2 Operator Qualifications**

6.2.1 Base Level Water Supply Operator

6.2.1.1 High School Diploma or equivalent and one (1) year of acceptable operating experience, or;

6.2.1.2 Three (3) years of acceptable operating experience, and;

6.2.1.3 Successful completion of the base level written examination;

6.2.2 Water Treatment Operator-In-Training (OIT)

An operator who lacks either the education or experience requirements for a base level license may, with the approval of the Secretary, upon recommendation by the Advisory Council, and after successful completion of the base level written examination, receive an interim Operator-

in-Training (OIT) license, for a maximum of three (3) years, pending fulfillment of the regular license requirements.

6.2.3 Circuit Rider. ~~To be classified~~ qualify as a circuit rider, an operator must be able to meet the following criteria:

6.2.3.1 Must be certified for all endorsements required for the water systems for which he/she is in direct-responsible-charge and/or operates.

6.2.3.2 ~~Spend a recommended number of~~ Shall make at least three (3) visits each week at each water system that provides any treatment and shall make at least one (1) visit each week for each system that has no treatment he/she is in direct-responsible-charge. This number may be adjusted by the Advisory Council based upon a yearly review written request from the operator and/or owner of the water system with justification provided for making the change.

6.2.3.2.1 The number of visits spent each week at each water system must be documented on forms, ~~provided~~ approved by the Division, and submitted upon request. Information that must be contained includes: name of water system, name of operator, date of visit, time of visit, activities performed (i.e., filled chlorine tank, adjusted feed rate, etc.)

6.2.3.2.2 For the purposes of this section, a DRC circuit rider must be available in the event of an emergency, but does not have to be on-site.

6.2.3.3 The distances between each water system shall be such that, in the event of an emergency, the circuit rider will be able to reach the water system within two (2) hours of first being notified of the emergency.

6.2.4 Grandfather Clause: A valid, base level license and any applicable endorsements shall be issued by the Secretary, upon recommendation by the Advisory Council, to the individual(s) certified by the governing body or owner of a public water system to have been in responsible charge and/or operated a water facility on the effective date of this regulation, under the following criteria:

6.2.4.1 the individual(s) can provide documentation to the Advisory Council attesting to the fact they have been in a position of Direct-Responsible-Charge and/or operated a water facility for at least five (5) years prior to the adoption date of these Regulations- , and

6.2.4.2 any application for a license pursuant to this section must be submitted on or before July 1, 2001.

6.2.5 A license and endorsement(s) granted under Section 6.2.4 of these Regulations shall not be transferable to another water system.

6.2.6 Acceptable Experience Requirement: An applicant for any endorsements or sub-endorsements must have at least one year of acceptable experience with the treatment process or distribution system in order to receive the endorsement on his/her license. Applicants that take and pass the endorsement test may receive an Operator in Training license for up to one year in order to obtain the necessary

experience.

## 7.0 Licensing Procedures

### 7.1 Examinations

7.1.1 The Advisory Council or its authorized designee may enter into a contract with third party to prepare, administer and grade written examinations required for each category and classification of license. A minimum score of seventy percent (70 %) shall be required to pass the examination. Examinations are confidential and remain the property of the Advisory Council. Due to unusual and extenuating circumstances, the Advisory Council may waive the requirements for the written examination, in which case an oral recorded examination shall be conducted and retained by the Advisory Council.

### 7.1.2 Schedule

7.1.2.1 Examinations shall be held at places and times designated by the Advisory Council, and shall be held at least semiannually. Advance public announcement shall be made by the Advisory Council at least two (2) months prior to the scheduled examination date.

### 7.1.3 Applications

7.1.3.1 Candidates wishing to take any license examination must submit an application to the Advisory Council at least thirty (30) days prior to the announced date of the examination on forms provided by the Advisory Council. No application form shall require a picture of the applicant, require information relating to citizenship, place of birth, or length of State residency, nor shall it require personal references

### 7.1.4 Application Review and Notification

7.1.4.1 The Advisory Council shall review all applications submitted and determine the eligibility of each candidate to sit for the particular examination applied for. Each candidate approved for examination shall be notified in writing by the Advisory Council of the time and place of the next examination for which the candidate is eligible. Such notification shall be given at least two (2) weeks prior to the examination date.

### 7.1.5 Fraudulent Applications

7.1.5.1 Where the Council has found to its satisfaction that an application has been fraudulent, or that false information has been intentionally supplied, it shall report its finding to the Attorney General for further action.

### 7.1.6 Eligibility

7.1.6.1 Approved applications for examination shall remain valid for one (1) year. Any approved candidate who fails to appear for an examination during the one (1) year period following the first notification of eligibility must submit a new application for examination to the Advisory Council.

7.1.6.2 Any applicant that fails to submit payment for their license within ninety (90) days of the first notification they passed the examination and are eligible for

licensure must submit a new application to the Advisory Council and retake the exam.

### 7.1.7 Appeal of Rejected Applications and Failed Examinations

7.1.7.1 Where the application of a person has been refused or rejected, the applicant may appeal in writing, via certified mail, to the Secretary within thirty (30) days. Any applicant who failed the examination has the right to appeal before the Advisory Council.

### 7.1.8 Re-Examination

7.1.8.1 Any candidate who fails to pass an examination may apply for re-examination upon subsequent scheduled examination dates. Candidates are permitted to sit for the same examination two (2) times per year. If both examinations are failed, the candidate must wait one (1) year prior to re-examination.

## 7.2 Issuance of License

7.2.1 On satisfactory fulfillment of the requirements provided in this regulation, and providing proof of employment at a Delaware water system, the candidate shall be issued a suitable license by the ~~Secretary~~ Director, upon recommendation by the Advisory Council. The license shall indicate all endorsements for which the operator is qualified, ~~and~~ the date of issuance and date of expiration.

## 7.3 Renewal of License

7.3.1 Licenses shall be renewed every two (2) years unless suspended, revoked for cause, or invalidated under 7.4. The deadline renewal date shall be the month and day of the original license issuance. Application for renewal must be submitted to the Advisory Council on forms provided by the Advisory Council at least sixty (60) days prior to the deadline renewal date.

7.3.2 In addition to Section 7.3.1, all operators, including grandfathered operators, must receive an additional amount of training, as approved by the Advisory Council, every two (2) years in order to renew their licenses, as shown below.

7.3.2.1 Twenty (20) educational contact hours every two (2) years for operators who have endorsements on their licenses.

7.3.2.2 Twelve (12) educational contact hours every two (2) years for operators with a base level license.

7.3.3 Any license that has not been renewed in accordance with 7.301 and 7.302 shall be automatically invalidated. Such expired license may be revalidated without examination upon payment of the appropriate fee and verification of completion of continuing education requirements within one (1) year from the expiration date. Licenses not reinstated within one (1) year shall submit a new application to the Advisory Council and may be required to sit for the appropriate written examination.

Note: Continuing education credits may be earned during the period of invalidation if the applicant is short of

the required number. However, these credits will not carry over to the two-year term of the renewed license.

#### 7.4 Denial of Renewal, Suspension, or Revocation of Licenses and Placement on Probation

7.4.1 The Secretary may suspend or revoke the license of an operator, after considering the recommendations of the Advisory Council, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. Said recommendations to the Secretary by the Advisory Council shall be made upon the Advisory Council conducting a hearing in accordance with provisions established under these regulations. Examples of actions which may result in denial of renewal, suspension or revocation of a license or placement on probation include, but are not limited to; failure to notify the Division of chemical overfeeds and other emergencies, failure to respond to an emergency, etc.

#### 7.5 Fees

7.5.1 The fee schedule as authorized by 16 **Del.C.** 122(3)(c) and set forth below shall take effect on the effective date of this regulation.

7.5.1.1 ~~Application for~~ Initial Annual License \$50.00. Biennial License \$100

7.5.1.2 ~~Application for~~ Renewal of Annual License \$50.00. Biennial License \$100

7.5.2 All ~~application~~ fees are payable upon application notification by the Division that an applicant has been approved for licensure.

#### 7.6 Reciprocity

7.6.1 A license of comparable classification may be issued without examination to any person who holds a certificate or license in any state, territory, or possession of the United States or any country, if in the judgment of the Secretary, the requirements under which the certification or license was issued do not conflict with the provisions of this regulation or any rules promulgated hereunder, and are of a standard not lower than that specified by this regulation.

### 8.0 Preemption

The provisions of these regulations preempt existing regulations of this State insofar as they relate to or conflict with the provisions of this regulation.

### 9.0 Severability

Each Section of this regulation and every part of each Section is an independent Section and part of a Section, and the holding of any Section or part thereof to be unconstitutional, void, or invalid for any cause does not affect the validity or constitutionality of any other Section or part thereof which shall continue valid and effective.

### 10.0 Disciplinary Procedures

10.1 Grounds for Discipline. The conditions and actions of an applicant or licensed operator which may result in disciplinary action as set forth in 10.3 of this Section includes, but is not limited to, the following list. If after following the Disciplinary Procedures as stated in Section 10.2, the Council finds that, after conducting an investigation and hearing an applicant or licensed operator:

10.1.1 Has acted fraudulently or with material deception in order to be certified; or

10.1.2 Has engaged in illegal, incompetent or negligent conduct in the provision of water system operation; or

10.1.3 Has as an operator or otherwise, in the practice of his or her profession, engaged in an act of consumer fraud or deception, or engaged in the restraint of competition, or participated in price-fixing activities; or

10.1.4 Has violated a lawful provision of this Section or any lawful rule or regulation established here under.

#### 10.2 Disciplinary Procedures

10.2.1 Notice of Violation: Whenever the Director has reason to believe that a violation of any of these Regulations has occurred or is occurring, the Director shall notify the alleged violator and the Secretary. Such notice shall be in writing, may be sent by Certified Mail, or hand delivered, shall cite the Regulation or Regulations that are allegedly being violated, and shall state the facts which form the basis for believing that the violation has occurred or is occurring.

10.2.2 Investigation: Whenever the Director issues a Notice of Violation, an investigation shall be conducted to determine if the alleged violations have occurred or are occurring. ~~One~~ Two members of the Advisory Council shall act as the investigator and shall report the findings of the investigation to the Advisory Council. Upon review of all the facts concerning the alleged violation(s), the Advisory Council will vote on recommended disciplinary sanction(s), as listed in Section 3.0. The investigative member of the Advisory Council will not vote on the recommended disciplinary actions. The Advisory Council shall report to the Secretary and the Director with the findings of fact and recommendations for disciplinary action.

10.2.3 Hearing Request: Any operator who has received a Notice of Violation may submit a request for a hearing to the Director within 30 days via certified mail. A hearing will be held within 180 days.

10.3 Disciplinary Sanctions. Persons regulated under this Section who have been determined to be in violation of this Section may be subject to the following disciplinary actions:

10.3.1 Issuance of a letter of reprimand

10.3.2 Placement on probationary status

10.3.3 Imposition of a fine not to exceed \$1,000 for each offense

10.3.4 Suspension of License

10.3.5 Revocation of License

10.4 Renewal of License after Revocation: An operator that has had his/her license revoked by the Secretary and wishes to get their license back must submit a new application to the Advisory Council for consideration. The application shall not be submitted for at least one year after the date of revocation.

#### 11.0 Penalty Clause

11.1 Any person who neglects or fails to comply with this regulation shall be subject to penalty as provided in 16 Del.C. ~~107122~~(3)(c).

#### APPENDIX A

Listed below are the general endorsement categories. Under each general category is a list of the endorsement sub-categories (unit processes) associated with each general category.

- A. Disinfection
  - 1. Hypochlorination (Calcium or Sodium), powder or liquid
  - 2. Gas Chlorination
  - 3. Ozonation
  - 4. Bromination
  - 5. Iodine
  - 6. Chloramines
  - 7. Chlorine Dioxide
  - 8. Ultraviolet Light
- B. Chemical Feed
  - 1. Lime - Soda Ash Addition
  - 2. pH Adjustment
  - 3. Inhibitor - bimetallic phosphate, hexametaphosphate, orthophosphate, polyphosphate
  - 4. Sequestering
  - 5. Permanganate
  - 6. Peroxide
  - 7. Fluoridation
- C. Filtration
  - 1. Activated Carbon, powder or granulated
  - 2. Sand - Pressure, Rapid, Slow
  - 3. Reverse Osmosis
  - 4. Greensand
  - 5. Activated Alumina
  - 6. Ion Exchange
  - 7. Cartridge
  - 8. ~~Diatomaceous~~ Diatomaceous Earth
  - 9. Ultrafiltration
  - 10. Microfiltration
- D. Surface Water Operations

- 1. Algae Control
- 2. Coagulation
- 3. Flocculation
- 4. Rapid Mix
- 5. Sedimentation
- 6. Sludge Treatment
- E. Other Specified Treatment
  - 1. Aeration - Cascade, Diffused, Packed Tower, Slat Tray or Spray
  - 2. Dechlorination - using reducing agents, sodium bisulfate, sodium sulfide, or sulfur dioxide
  - 3. Distillation
  - 4. Bone Char
  - 5. Electrodialysis
- F. Distribution
  - 1. Flow less than 500 gpm at 20 psi
  - 2. Flow greater than 500 gpm at 20 psi

### DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Section 607 (18 Del.C. §607)  
18 DE Admin. Code 607

#### ORDER

A public hearing was held on August 3, 2004 to receive comments on amendments to Regulation 607 relating to Delaware Defensive Driving Courses. By my order of June 21, Deputy Insurance Commissioner F.L. Peter Stone was appointed hearing officer to receive comments and testimony on the proposed amendments to the regulation. Public notice of the hearings and publication of proposed Regulation 607 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law. Fourteen persons attended the public hearing. Fifteen written submissions were accepted into the record which was kept open until August 6, 2004.

#### Summary Of The Evidence And Information Submitted

Kathy S. Gravell, Esquire, a legal representative of the Department, presented oral testimony on behalf of the Department in support of the proposed changes to the regulation. The most significant change to the regulation relates to the Department's desire to authorize online courses in addition to the live classroom courses that are currently permitted under the regulation. Other changes relate to the certification process, some changes to the required materials to be covered, the student identification process, deletion of the instructor evaluation forms and the certification of providers.

Virtually all of the oral and written comments related to the issue of permitting online courses. The local direct contact classroom providers were generally opposed to the addition of online courses to those currently permitted under the regulation because of the lack of interaction between instructor and student. The classroom providers also focused on the opportunity a student would have to either cheat on the number of required hours to take the course or the ease one would have to have another complete the online course in his or her stead. The online providers testified that they conduct courses that qualify in many states and that they have developed protocols to reduce or eliminate fraud. For example, there are timers on the programs that do not allow a person to skip sections or go through sections too quickly, there are coded questions that pop up intermittently to test the taker to make sure someone else has not taken over for the student, and they have programs that force a student to repeat a section if a question is answered incorrectly or if there's a failure to respond correctly to a request to confirm the student's identify. One point of agreement for all providers was that they had a shared goal of teaching safe driving techniques and believed that it was important that there be more safe drivers on Delaware's roads.

On specific issues like student identification, it was agreed that a government issued identification card is desirable. The Department believes that a government issued photo identification card is sufficient to assure the identity of the person taking the course. Even though classroom instructors should check a photo ID at the start of the course, the Department felt some latitude for the online courses was better noting that the process for obtaining the ID could be tailored by each provider. In fact, one online provider does not give tests on the computer but contracts with a testing agency in the student's local area to administer the test upon completion of the course.

One classroom instructor, William Alexander, noted that only 43% of the students could learn by reading material only and felt that it was a disservice to the purposes of the course to deny the student the verbal and tactile experience of the classroom, especially the give and take of discussions. The online providers noted that their courses have audio and visual stimulators in addition to the text material. Mr. Alexander did suggest that persons who were taking the course because it was judicially required should not be permitted to take an online course. The online providers discussed their commitment to interactive instruction through chat or toll free calling as well as their commitment to security measures to limit the opportunity to cheat by using online instruction.

### **Findings Of Fact**

The purpose for a public hearing on a proposed

regulatory change is to determine the necessity for the change and whether the language proposed to effect that change needs to be changed or modified for purposes of clarity or efficiency. Already extant in Regulation 607 is the authority of the Defensive Driving Committee to resolve the technical issues of compliance, assure the qualifications of the providers, reconcile and resolve technical issues relating to course materials and the like. To the extent the written submissions and the testimony at the public hearing on the proposed changes dealt with such issues, as opposed to the more general issue of whether the changes proposed should be made, those comments can be considered by the Committee as part of its duties instead of a hearing officer under the Administrative Procedures Act. The testimony for or against the approval of online courses reflected the interests of the advocates with the online providers and those who supplies course materials to them in favor of the change and the classroom course providers and their instructors opposed to the change. The Department, which has no basis to favor one type of instructional method over another supports the proposed changes to the regulation. The Department has provided an adequate basis for me to find that the proposed changes to the regulation should be approved without change. Based on the record, I find that changes in technology have reduced or eliminated many of the problems alleged by the opponents to the proposed changes. All of the online providers who testified or provided written submissions, have agreed to all of the same requirements that apply to classroom providers. They have agreed to assure that their courses will meet the time requirements of the regulation and that they will also be tailored to provide the written and Delaware specific information required by the regulation. They have agreed to have qualified staff available by phone or chat on a 24/7 basis to meet the regulatory requirements. I find merit in the testimony that some students learn better by reading and others learn better by lecture. Expanding the provider base to allow students to utilize the instructional method best for them serves the goal upon which all providers agree, namely to provide the best information to the student to make the student a better driver.

Questions relating to the details of how that is accomplished are appropriately left to the Committee. I find that the Department is exclusively charged with the authority to designate the classes and to determine the qualifications of the instructors. The proposed additions to the regulation are within the jurisdictional grant given to the Commissioner by the statute. There is no basis to find that the approval of online courses would violate the laws of this State or that students should be denied this viable alternative to satisfy any judicial requirements they may have to take such a course. As was noted in the testimony, the use of course credit to reduce one's premium has and continues to be within the discretion of the insurance company and its

decision is independent of the determination of whether a student should be denied or allowed the opportunity to have the online option available.

There were some comments and submissions that recommended changes to the proposed wording of the changes. However, those changes are a matter of style and do not warrant a finding that the proposed changes should be altered from the form published on July 1, 2004.

### Decision

Based on the provisions of 18 Del.C. §§311 and 2503, and the record in this docket, I adopt the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated August 9, 2004 and order that Regulation 607 be amended as provided for in the notice published in the Delaware Register of Regulations 8 DE Reg. 62 (7/1/04).

I order that the proposed change shall become effective on September 15, 2004.

Donna Lee H. Williams  
Insurance Commissioner

**\* PLEASE NOTE: THE JULY 1, 2004 PUBLISHED VERSION OF THIS REGULATION AS A PROPOSED REGULATION APPEARING AT 8 DE REG. 62 (7/1/04) DID NOT REFLECT THE VERSION AS SUBMITTED FOR PUBLICATION WHICH IS THE OFFICIAL VERSION OF THE PROPOSED REGULATION. THE FINAL VERSION PRINTED BELOW IS IDENTICAL TO THE PROPOSED VERSION AS SUBMITTED TO THE REGISTRAR AS REQUIRED BY LAW. THE REGISTRAR OF REGULATIONS REGRETS THE ERROR. THE VERSION BELOW REPRESENTS THE FINAL VERSION OF THE REGULATION AS DULY AMENDED.**

### 607 Defensive Driving Course Discount (Automobiles and Motorcycles) [Formerly Regulation 37]

#### 1.0 Purpose and Authority

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, ~~Sponsors~~ Providers and Instructors. This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.

**2 DE Reg 989 (12/1/98)**

#### 2.0 Authority

~~This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.~~

~~2 DE Reg 989 (12/1/98)~~

#### 2.0 Definitions

“Classroom courses”— for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.

“Committee”— for the purpose of this regulation means the Defensive Driving Credentials Committee.

“Department”— means the Delaware Insurance Department.

“On-line courses”— for the purpose of this regulation means instruction provided through the use of a computer including the use of CD roms or websites.

“Providers” – Corporate sponsor for any course as well as the individual who signs the application for the course.

#### 3.0 Minimum Requirements

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

3.1 The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

3.2 The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the Insurance Commissioner.

**2 DE Reg 989 (12/1/98)**

#### 4.0 Application

4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

4.2 An insured who has received a defensive driving discount as outlined in section 4.1 above may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or within two years thereof to receive a 15% discount for an additional three year period as outlined in section 4.1 above.

Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

**2 DE Reg 989 (12/1/98)**

**5.0 Implementation**

5.1 In the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.

5.2 The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

5.3 All courses certified by this Department as of September 1, 2004 shall apply for re-certification under the provisions of section 7 of this regulation on or before January 1, 2005. All courses not certified by this Department prior to September 1, 2004 shall apply for certification under the provisions of section 7 of this regulation.

**6.0 Defensive Driving Course Credential Committee**

6.1 The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). In appointing Committee members, the Commissioner shall consider the following characteristics:

- 6.1.1 ~~Knowledge~~ of principles of teaching and learning;
- 6.1.2 ~~Knowledge~~ of safe driving principles; and
- 6.1.3 ~~Knowledge~~ of Delaware Motor Vehicle laws; and
- 6.1.4 ~~To recommend approval of a course or applicant, the Committee shall require the course contains the following: any other relevant characteristics or experience.~~

6.2 The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course ~~sponsor~~ provider and who meet the standards set forth in sections 10.1.1 through 10.1.4.

6.3 Duties. The Committee shall:

- 6.3.1 ~~Choose~~ Elect its Chair~~man~~ person and shall make recommendations to the Commissioner concerning the duties set forth herein;
- 6.3.2 Review and examine defensive driving course ~~sponsors~~ provider, instructors and prospective ~~sponsors~~ providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course ~~sponsor~~ provider or prospective ~~sponsors~~ provider and applicants.
- 6.3.3 Review and examine defensive driving

courses and shall provide further occasional monitoring of courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements

6.3.4 Certify approved course ~~sponsors~~ providers and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and

6.3.5 Conduct any other such activity reasonably related to the furtherance of its duties.

**7.0 Certification Criteria for Defensive Driving Programs ~~And Sponsors Providers~~**

Each course ~~sponsor~~ provider shall:

7.1 Submit for approval written ~~course description~~ instructor and student materials for any defensive driving course to be offered that minimally includes the ~~following~~ elements listed in this section. On-line courses shall provide free site access to a Committee member for purposes of verification of compliance.

7.1.1 The definition of defensive driving and the collision prevention ~~formula~~ theory serving as the basis for the course;

7.1.2 Vehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;

7.1.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

7.1.4 A discussion of the ~~five~~ five factors affecting driving ~~driving defensively, being: the condition of the driver, the vehicle, the road, weather and lighting as they pertain to;~~ and how they pertain to driving defensively, including, but not limited to:

7.1.4.1 The condition of the driver, the vehicle, the road, sun glare, weather and lighting;

7.1.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, talking with a passenger, reading and eating;

7.1.5 A discussion, including specific requirements of Delaware law where applicable, of ~~specific~~ pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

7.1.6 Consideration of the hazards and techniques of various driving situations such, as but not limited to, city, highway, expressway and rural driving, including but not limited to proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

7.1.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include identifying oneself as an aggressive driver and the appropriate manner to respond.

7.2 Require its instructors in classroom courses to present courses information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

7.3 Require on-line courses to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions.

7.3.4 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the refresher advanced (renewal) course. Each classroom hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum.

7.5 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.

7.4.6 Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.

7.5.7 Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.

7.8 Material required to be covered by this Regulation shall be discussed by the instructor in a classroom situation and be included as on screen information in an on-line course.

7.6.9 Supply students who complete a defensive driving course and who have presented a government issued photo identification with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsor's authorized signature.

7.7 Require that each of its instructors request his or her students complete a standardized Course/Instructor Evaluation Form for not less than one-third of the courses provided by each instructor and retain completed evaluation forms until the expiration of the certification period during which they are completed. The Course/Instructor Evaluation Form shall be in the manner and form prescribed by the Committee.

7.10 All courses shall provide all students with a copy of a letter provided by the Committee informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in

hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and shall provide a hard copy with the certificate of completion.

7.8.11 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

## **8.0 Complaints, De-certification, Suspension And Probationary Status**

8.1 Complaints received by the Department of Insurance against course providers and/or instructors shall be directed to the Chairperson for the Committee. The Chairperson shall forward the complaint, in writing or by electronic mail, to the provider and shall request a response. The provider shall respond in writing or by electronic mail within fifteen working days. At the next meeting, the Committee shall determine whether the complaint is in an area over which it has the authority to take action or to make a recommendation. The results shall be reported to the course provider in writing as soon as reasonably possible.

8.1.2 Course sponsors providers and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.

8.2.3 Prior to de-certification, placement on probation or suspension of certification, the course sponsor provider or/ instructor or both shall be notified, in writing, by the Committee. The course sponsor provider or/ instructor or both shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.

8.3.4 A course sponsor provider or instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.

8.4.5 A course sponsor provider or/instructor or both may be de-certified, suspended or placed on probation for the following:

8.4.5.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;

8.4.5.2 Falsification of, or failure to keep and provide adequate student records and information as required herein;

8.4.5.3 Falsification of, or failure to keep and provide adequate financial records and documents as required; and

8.4.5.4 Failure to comply with any other standard set forth section in of this Regulation.

## **9.0 Appeal Procedures**

9.1 Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course ~~sponsor provider or instructor~~ instructor or both may file an appeal requesting review of the action taken.

9.2 The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

9.3 The Committee shall conduct all hearings pursuant to 29 Del. C., Ch.101 of the Delaware Code Annotated.

## **10.0 Certification Process for Defensive Driving Instructors**

10.1 Basic Requirements. Each instructor shall:

10.1.1 Be at least 18 years of age;

10.1.2 Be a high school graduate or have a G.E.D.;

10.1.3 Provide a certified copy of his or her driving record showing he or she Hholds a valid driver's license with no more than ~~{64}~~ four (4) points, no suspensions or revocations in the past two years; and

10.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to require a criminal history background check of all applicants for an instructor's certification.

10.2 The Committee may recommend that Basic Requirements sections 10.1.2 through 10.1.4 hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.

10.3 Re-certification. Every two years each instructor shall:

10.3.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

10.3.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

10.3.3 Submit a form as prescribed by the Committee certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation.

10.3.4 Submit a certified copy of his or her driving record.

~~10.3.4~~10.3.5 The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. The Committee shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.

## **11.0 ~~Effective date~~ Meetings**

~~11.1 This act shall become effective on January 1 of 1999. The committee shall set a day and time for quarterly~~

meetings. Other meetings may be set as needed.

## **12.0 Effective Date**

12.1 This act shall become effective on September 14, 2004.

**2 DE Reg 989 (12/1/98)**

---

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 1501 (18 Del.C. §1501)  
**18 DE Admin. Code 1501**

### **ORDER**

A public hearing was held on August 3, 2004 to receive comments on an amendment to Section 12 of Regulation 1501 relating to Medicare Supplement Insurance Minimum Standards. By my order of June 21, Deputy Insurance Commissioner F.L. Peter Stone was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearings and publication of proposed Regulation 1501 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law. Two persons attended the public hearing, a representative of the Delaware Department of Insurance and a representative of BCBSD, Inc. Written comments in support of the proposed change were received from Delaware Developmental Disabilities Council, the State Counsel for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens and AmeriHealth. A submission was also received from a trade group, America's Health Insurance Plans ("AHIP").

### **Summary Of The Evidence And The Information Submitted**

I have reviewed the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated August 9, 2004. The written comments received supported the proposed change because it expanded the group of persons who would be eligible for guaranteed issue of health insurance that is primary to Medicare as well as the already existing guarantee for persons whose insurance is supplemental to Medicare. The BCBSD representative requested clarification of the term "some or all" in the proposed language. The Department responded that the language tracked the same provisions in other state's corresponding regulations. The Department also noted that the purpose was to reinstate the language that had been deleted when the regulation was last amended in 2002. AHIP's comments were mostly neutral and raised the question of cost for consumers as a result of the broader base

of persons entitled to guaranteed issue insurance.

### Findings Of Fact

Upon review of the regulation as it existed prior to the 2002 amendment, I find that the proposed language is identical to the phrase that had been deleted in the prior amendment. This change would, in effect, bring Delaware back to where it was for ten years prior to the 2002 amendment. I also find that the proposed amendment does not conflict with the federal laws that apply to the State's ability to enforce this regulation with this amendment. In fact, most states, especially those in the Northeast Region of the National Association of Insurance Commissioners have this clause in their existing regulations. While AHIP raised the issue of cost, it also acknowledged that it is likely that there will be relatively few individuals seeking the benefits provided by the new re-installed language. I note that there was no opposition to the proposed change to the regulation.

### Decision

Based on the provisions of 18 Del.C. §§311 and 3403, and the record in this docket, I adopt the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated August 9, 2004 and order that Regulation 1501 Section 12.2.1 be amended as provided for in the notice published in the Delaware Register of Regulations 8 DE Reg. 62 (7/1/04) as follows:

12.2.1 The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan.

I further order that the proposed change shall become effective on September 15, 2004.

Donna Lee H. Williams  
Insurance Commissioner

## 12.0 Guaranteed Issue for Eligible Persons

### 12.1 Guaranteed Issue

12.1.1 Eligible persons are those individuals described in section 12.2, who seek to enroll under the policy during the period specified in section 12.3, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

12.1.2 With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a

Medicare supplement policy described in section 12.5 that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

12.2 An eligible person is an individual described in any of the following paragraphs:

12.2.1 The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual because the individual leaves the plan.

12.2.2 The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:

12.2.2.1 The certification of the organization or plan under this part has been terminated; or

12.2.2.2 The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

12.2.2.3 The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

12.2.2.4 The individual demonstrates, in accordance with guidelines established by the Secretary, that

12.2.2.4.1 The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

12.2.2.4.2 The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

12.2.2.5 The individual meets such other exceptional conditions as the Secretary may provide.

12.2.3 The individual is enrolled with:

12.2.3.1 An eligible organization under a contract under section 1876 of the Social Security Act (Medicare Cost);

12.2.3.2 A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

12.2.3.3 An organization under an agreement under section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

12.2.3.4 An organization under a Medicare Select policy; and

12.2.3.5 The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section 12.2.2.

12.2.4 The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

12.2.4.1 Of the insolvency of the issuer or bankruptcy of the non-issuer organization or of other involuntary termination of coverage or enrollment under the policy;

12.2.4.2 The issuer of the policy substantially violated a material provision of the policy; or

12.2.4.3 The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

12.2.5 Subsequent first time enrollment with Medicare+Choice

12.2.5.1 The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under section 1894 of the Social Security Act, or a Medicare Select policy; and

12.2.5.2 The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

12.2.6 The individual, upon first becoming eligible for benefits under Part A of Medicare at age 65, enrolls in a Medicare+Choice plan under Part C of Medicare,

or with a PACE provider under section 1894 of the social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment.

12.3 Guaranteed Issue Time Periods

12.3.1 In case of an individual described in section 12.2.1, the guaranteed issue period begins on the later of:

12.3.1.1 the date the individual receives a notice of termination or cessation of all supplemental health benefits (or if a notice is not received, notice that a claim has been denied because of such a termination or cessation); or

12.3.1.2 the date that the applicable coverage terminates or ceases and ends sixty-three (63) days thereafter;

12.3.2 In the case of an individual described in sections 12.2.2, 3, 5 or 6 whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

12.3.3 In the case of an individual described in section 12.2.4.1, the guaranteed issue period begins on the earlier of:

12.3.3.1 the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and

12.3.3.2 the date that the applicable coverage is terminated and ends on the date that is sixty-three (63) days after the date the coverage is terminated;

12.3.4 In the case of an individual described in sections 12.2.2, 4.2, 4.3, 5 or 6 who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date: and

12.3.5 In the case of an individual described in 12.2 but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date.

12.4 Extended Medigap Access for Interrupted Trial Periods

12.4.1 In the case of an individual described in 12.2.5. (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in 12.2.5.1 is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section 12.2.5.

12.4.2 In the case of an individual described in section 12.2.6 (or deemed to be so described, pursuant to this

paragraph) whose enrollment with a plan or in a program described in section 12.2.6 is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section 12.2.6; and

12.4.3 For purposes of sections 12.2.5 and 6, no enrollment of an individual with an organization or provider described in section 12.2.5.1, or with a plan or in a program described in section 12.2.6, may be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

12.5 Products to Which Eligible Persons are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

12.5.1 Section 12.2.1, 2, 3, and 4 is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

12.5.2 Section 12.2.5 is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in section 12.5.1.

12.5.3 Section 12.2.6 shall include any Medicare supplement policy offered by any issuer.

12.6 Notification Provisions

12.6.1 At the time of an event described in section 12.2 because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under section 12.1. Such notice shall be communicated contemporaneously with the notification of termination.

12.6.2 At the time of an event described in section 12.2 because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under section 12.1. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

**7 DE Reg. 800 (12/1/02)**

**\* PLEASE NOTE: AS THE REST OF THE REGULATION WAS NOT AFFECTED, IT IS NOT BEING REPRODUCED HERE.**

## DEPARTMENT OF LABOR COUNCIL ON APPRENTICESHIP & TRAINING

Statutory Authority: 19 Delaware Code,  
Section 202(a) (19 Del.C. §202(a))

### ORDER

The Council on Apprenticeship and Training received a letter dated June 2, 2004, from John J. Czerswinski, Business Manager, Local 74 Plumbers & Pipefitters, requesting a change in the ratio of journeymen to apprentice (3 to 1 instead of the current 5 to 1) to provide more work opportunities for a larger apprenticeship class. This letter prompted the Council to propose a change to the regulation and invite public comment.

A public hearing was held on August 3, 2004 to receive comments relating to a proposed change to Regulation 106.5 Standards of Apprenticeship. The members of Council present recommended that the Secretary of Labor adopt the proposal as it was published in the Register of Regulations, Vol. 8, Issue 1 (July 1, 2004).

#### Summary Of The Evidence And Information Submitted

1. Edward J. Capodanno, President, Associated Builders and Contractors, Inc. sent a letter dated July 29, 2004 in support of the proposal to reduce the apprenticeship ratio for plumbers from 5/1 to 3/1. He indicated the playing field should be level; the ratio should apply to union and non-union contractors. The ratio should not be superseded by a collective bargaining agreement. He also thought the same ratio should apply to other trades to attract more individuals to the construction industry and facilitate enforcement by the Department of Labor.

#### Recommended Findings Of Fact With respect To The Evidence And Information

1. The Council is persuaded that there is a need for the change in the ratio for plumbers/pipefitters to provide more work opportunities for apprentices.

2. The new ratio of one apprentice for each three journeypersons will allow for adequate training and there will be employment opportunities for the increased number of plumbers/pipefitters who complete the apprenticeship program.

3. The ratio applies to union and non-union companies. The ratio provided in a collective bargaining agreement can only prevail if the standard is not lower than that of the State.

4. The Council cannot expand the change to other trades without first noticing that change to allow for public comment.

**Recommendation**

The proposed change in the ratio for plumbers/pipefitters is respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 3<sup>rd</sup> day of August, 2004.

**COUNCIL ON APPRENTICESHIP AND TRAINING**

B. Eugene Battaglia  
Patricia Creedon  
Lewis Atkinson, Ed.D.  
R. Jerald Craig  
D. Robert Buccini  
Edward J. Brady  
David C. Harris

**Decision And Effective Date**

Having reviewed the record and adopted the recommendations of members of the Council on Apprenticeship and Training, the change to Regulation 106.5 setting the ratio of journeypersons to apprentices in the plumbing/pipefitting trade at 3 to 1 is hereby made effective 10 days following publication of the final regulation in the Register of Regulations.

**Text And Citation**

The text of the Regulation 106.5 appears in the Register of Regulations, Vol. 8, Issue 1 (July 1, 2004).

**DEPARTMENT OF LABOR**

Harold E. Stafford, Secretary of Labor

**106.5 Standards of Apprenticeship**

The following standards are prescribed for a Program.

(A) The Program must include an organized, written plan delineating the terms and conditions of employment. The training and supervision of one or more Apprentices in an apprenticeable occupation must become the responsibility of the Sponsor who has undertaken to carry out the Apprentice's training program.

(B) The standards must contain provisions concerning the following:

(1) The employment and training of the Apprentice in a skilled occupation;

(2) an equal opportunity pledge stating the recruitment, selection, employment and training of Apprentices during their apprenticeships shall be without discrimination based on: race, color, religion, national origin or sex. When applicable, an affirmative action plan in accordance with the State's requirements for federal purposes must be instituted;

(3) the existence of a term of apprenticeship, not less than one year or two thousand (2,000) hours consistent with training requirements as established by industry practice;

(4) an outline of the work processes in which the Apprentice will receive supervised work experience and on-the-job training, and the allocation of the approximate time to be spent in each major process;

(5) provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of one hundred forty-four (144) hours for each year of apprenticeship is required. Such instruction may be given in a classroom, through trade, industrial or approved correspondence courses of equivalent value or in other forms approved by the State Department of Labor, Office of Apprenticeship & Training;

(6) a progressively increasing schedule of wage rates to be paid the Apprentice, consistent with the skill acquired which shall be expressed in percentages of the established Journeyman's hourly wage;

(7) Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

- 1) 1 to 7 year programs
- 2) starting pay must be at least minimum wage
- 3) final period must be at least 85%

**1 YEAR [OR] 2,000 HOUR APPRENTICESHIP PROGRAM:**

|     |              |     |
|-----|--------------|-----|
| 1st | 1,000 hours: | 40% |
| 2nd | 1,000 hours: | 85% |

**2 YEAR [OR] 4,000 HOUR APPRENTICESHIP PROGRAM:**

|     |              |     |
|-----|--------------|-----|
| 1st | 1,000 hours: | 40% |
| 2nd | 1,000 hours: | 51% |
| 3rd | 1,000 hours: | 63% |
| 4th | 1,000 hours: | 85% |

**3 YEAR [OR] 6,000 HOUR APPRENTICESHIP PROGRAM:**

|     |              |     |
|-----|--------------|-----|
| 1st | 1,000 hours: | 40% |
| 2nd | 1,000 hours: | 48% |
| 3rd | 1,000 hours: | 57% |
| 4th | 1,000 hours: | 65% |
| 5th | 1,000 hours: | 74% |
| 6th | 1,000 hours: | 85% |

**4 YEAR [OR] 8,000 HOUR APPRENTICESHIP PROGRAM:**

|     |              |     |
|-----|--------------|-----|
| 1st | 1,000 hours: | 40% |
| 2nd | 1,000 hours: | 46% |
| 3rd | 1,000 hours: | 53% |
| 4th | 1,000 hours: | 59% |
| 5th | 1,000 hours: | 65% |
| 6th | 1,000 hours: | 71% |
| 7th | 1,000 hours: | 78% |
| 8th | 1,000 hours: | 85% |

**5 YEAR [OR] 10,000 HOUR APPRENTICESHIP**

## PROGRAM:

|      |              |     |
|------|--------------|-----|
| 1st  | 1,000 hours: | 40% |
| 2nd  | 1,000 hours: | 45% |
| 3rd  | 1,000 hours: | 50% |
| 4th  | 1,000 hours: | 55% |
| 5th  | 1,000 hours: | 60% |
| 6th  | 1,000 hours: | 65% |
| 7th  | 1,000 hours: | 70% |
| 8th  | 1,000 hours: | 74% |
| 9th  | 1,000 hours: | 79% |
| 10th | 1,000 hours: | 85% |

## 6 YEAR [OR] 10,000 HOUR APPRENTICESHIP

## PROGRAM:

|      |              |     |
|------|--------------|-----|
| 1st  | 1,000 hours: | 40% |
| 2nd  | 1,000 hours: | 44% |
| 3rd  | 1,000 hours: | 48% |
| 4th  | 1,000 hours: | 52% |
| 5th  | 1,000 hours: | 56% |
| 6th  | 1,000 hours: | 60% |
| 7th  | 1,000 hours: | 64% |
| 8th  | 1,000 hours: | 68% |
| 9th  | 1,000 hours: | 72% |
| 10th | 1,000 hours: | 76% |
| 11th | 1,000 hours: | 81% |
| 12th | 1,000 hours: | 85% |

## 7 YEAR [OR] 10,000 HOUR APPRENTICESHIP

## PROGRAM:

|      |              |     |
|------|--------------|-----|
| 1st  | 1,000 hours: | 40% |
| 2nd  | 1,000 hours: | 43% |
| 3rd  | 1,000 hours: | 47% |
| 4th  | 1,000 hours: | 50% |
| 5th  | 1,000 hours: | 54% |
| 6th  | 1,000 hours: | 57% |
| 7th  | 1,000 hours: | 61% |
| 8th  | 1,000 hours: | 64% |
| 9th  | 1,000 hours: | 68% |
| 10th | 1,000 hours: | 71% |
| 11th | 1,000 hours: | 74% |
| 12th | 1,000 hours: | 78% |
| 13th | 1,000 hours: | 81% |
| 14th | 1,000 hours: | 85% |

(8) that the entry Apprentice wage rate shall not be less than the minimum prescribed by State statute or by the Fair Labor Standards Act, where applicable;

(9) That the established Journeyman's hourly rate applicable among all participating Employers be stated in dollars and cents. No Apprentice shall receive an hourly rate less than the percentage for the period in which he/she is serving applied to the established Journeyman's rate unless the Sponsor has documented the reason for same in the individual Apprentice's progress report and has explained the reason for said action to the Apprentice and Registration Agency.

In no case other than sickness or injury on the part of the Apprentice, shall a Sponsor hold back an Apprentice's progression more than one period or wage increment without the written consent of the Administrator;

(10) That the established Journeyman's rate provided for by the Standards be reviewed and/or adjusted annually. Sponsors of Programs shall be required to give proof that all employees used in determining ratios of Apprentices to Journeymen shall be receiving wages at least in the amount set for Journeymen in their individual program standards, or are qualified to perform as Journey men and must be paid at least the minimum journeyman rate;

(11) that the minimum hourly Apprentice wage rate paid during the last period of apprenticeship not be less than eighty-five (85) percent of the established Journeyman wage rate. Wages covered by a collective bargaining agreement takes precedent over this section. However, wages may not be below the State's required minimum progression.

(C) The Program must include a periodic review and evaluation of the Apprentice's progress in job performance and related instruction, and the maintenance of appropriate progress records.

(D) The ratio of Apprentices to Journeymen should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

(1) The ratio of Apprentices to Journeymen shall be one Apprentice up to each five (5) Journeymen employed by the prospective Sponsor unless a different ration based on an industry standard is contained in the signed Standards of Apprenticeship Agreement.

(2) The following have been recognized to be the industry standard for the listed trades:

## Ratio of Apprentice Journeymen\*

|                  |                                 |
|------------------|---------------------------------|
| 1 up to 4        | Sheet Metal Worker              |
| 1 up to 4        | Insulation Worker               |
| 1 up to 4        | Asbestos Worker                 |
| 1 up to 3        | Industrial Maintenance Mechanic |
| <u>1 up to 3</u> | <u>Plumbers/Pipefitters</u>     |
| 1 up to 3        | Electrician                     |
| 1 up to 3        | Precision Instrument Repairers  |
| 1 up to 3        | Glaziers                        |
| 1 up to 2        | Roofers                         |
| 1 up to 1        | Sprinkler Fitters               |

\* The ratio has no effect until the second apprentice is registered. Only one Journeyman is necessary in any trade for the first Apprentice.

(3) Exceptions.

a. If a collective bargaining agreement stipulates a ratio of Apprentices to Journeyman, it shall prevail provided the Bargaining Ration is not lower than the

State standard.

b. A deviation from the established standard may be granted by the Administrator upon written request after considering the needs of the plant and/or trade with consideration for growth, the availability of relevant training, and the opportunity for employment of skilled workers following the completion of their training. Such exception shall last no more than one year but may be renewed upon written request.

**5 DE Reg. 204 (7/1/2001)**

(E) At least forty (40) percent of all Apprentices registered must complete training. Apprentices who voluntarily terminate their apprenticeships or employment shall not be counted in reference to this section. Programs with fewer than five (5) Apprentices shall not be required to comply with this part.

(F) A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

(G) Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

(H) The required minimum qualifications for persons entering an Apprentice Program as defined in Section 106.2(C) must be met.

(I) Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

(J) Advance standing or credit up to 25% OJT hours of the particular trade term in question for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step may be granted. The granting of a greater amount of credit shall be set at the discretion of the Administrator based on supportive documentation submitted by the Sponsor. In no case shall more than one half of the particular trade term in question be granted unless the time in question has been spent in any state or federally registered program.

(K) Transfer of Employer's training obligation through the sponsoring Committee if one exists and as warranted, to another Employer with consent of the Apprentice and the Committee or Program Sponsors, with full credit to the Apprentice for satisfactory time and training earned, may be afforded with written notice to, and approval of, the Registration Agency.

(L) These Standards shall contain a statement of assurance of qualified training personnel.

(M) There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

(N) These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of Employment & Training, Office of Apprenticeship & Training.

(O) There will be a provision for the Registration, Cancellation and Deregistration of the Program, and a requirement for the prompt submission of any modification or amendment thereto.

(P) There will be provisions for Registration of Agreements, modifications and amendments, notice to the Division of persons who have successfully completed Programs, and notice of Cancellations, suspensions and terminations of Agreements and causes therefore.

(Q) There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

(R) There will be provisions for not less than five (5) days notice to Apprentices of any proposed adverse action and cause therefore with stated opportunity to Apprentices during such period for corrective action.

(S) There will be provisions for a grievance procedure, and the name and address of the appropriate authority under the program to receive, process and make disposition of complaints.

(T) There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

(U) There will be provisions for a participating Employer's Agreement.

(V) There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

(W) All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations and rules pertaining to apprenticeship.

(X) Programs and Standards of Employers and unions in other than the building and construction industry which jointly form a sponsoring entity on a multi-state basis and are registered pursuant to all requirements of this part by any recognized State apprenticeship agency shall be accorded Registration of approval reciprocity by the Delaware Department of Labor if such reciprocity is requested by the sponsoring entity. However, reciprocity will not be granted in the Building and Construction industry based on Title 29 CFR 29 Section 12(b) unless a "memorandum of understanding" has been signed by an individual state and the state of Delaware.

**3 DE Reg. 641 (11/1/99)**

**\* PLEASE NOTE: AS THE REST OF THE REGULATION WAS NOT AFFECTED, IT IS NOT BEING REPRODUCED HERE.**

---

**DEPARTMENT OF STATE  
OFFICE OF THE STATE BANKING  
COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code 708, 714 & 1113

**ORDER ADOPTING AMENDED REGULATION 708  
AND NEW REGULATIONS 714 AND 1113**

IT IS HEREBY ORDERED, this 4th day of August, 2004, that amended regulation 708 and new regulations 714 and 1113 are adopted as regulations of the State Bank Commissioner. Copies of amended regulation 708 and new regulations 714 and 1113 are attached hereto and incorporated herein by reference. Amended regulation 708 supersedes previous regulation 708. The effective date of amended regulation 708 and new regulations 714 and 1113 is September 11, 2004, and each regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Amended regulation 708 and new regulations 714 and 1113 are adopted pursuant to the requirements of Chapter 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of proposed amended regulation 708 and new regulations 714 and 1113 and their text were published in the July 1, 2004 issue of the Delaware Register of Regulations. The Notice also was published in *The News Journal* and the *Delaware State News* on July 1, 2004, and was mailed 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 and new regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before August 4, 2004, and stated that the proposed 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 4, 2004 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, Delaware.

2. No comments about the proposed amended and new regulations were received on or before August 4, 2004.

3. A public hearing was held on August 4, 2004 at 10:00 a.m. regarding proposed amended regulation 708 and new regulations 714 and 1113. The State Bank Commissioner, the Deputy Bank Commissioner for Supervisory Affairs and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed regulations for the record. No other comments were made or received at

the hearing.

4. After review and consideration, the State Bank Commissioner hereby adopts amended regulation 708 and new regulations 714 and 1113 as proposed.

August 4, 2004

Robert A. Glen, State Bank Commissioner

**708 Establishment of a Branch Office by a Bank or Trust  
Company  
5 Del.C. §770(a)**

Formerly Regulation No.: 5.770.0009

**1.0 Scope**

1.1 This regulation establishes procedures for the filing of an application to establish a branch office of a bank or trust company pursuant to Section 770(a) of Title 5 of the **Delaware Code** and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a mobile branch office pursuant to Section 770(c) of Title 5 is covered separately under Regulation No. 714.

**2.0 Application**

2.1 An application pursuant to Section 770(a) of Title 5 of the **Delaware Code** shall be in writing; shall be submitted on such forms the Commissioner may designate from time-to-time for that purpose, and shall include the following:

2.1.1 Name of applying bank or trust company.

2.1.2 Location of proposed branch office, including address.

2.1.3 Explanation of the necessity for the opening of the branch office.

~~2.1.3~~ 2.1.4 ~~The~~ Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the application as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

**3.0 Fee**

The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

**4.0 Notice**

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(a) of Title 5 of the **Delaware Code**

and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

#### 5.0 Additional Information, Investigation and Hearing

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner ~~at his~~ has discretion ~~may~~ to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

#### 6.0 Decision

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the branch office.

#### 7.0 Certificate of Authority

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved branch office.

#### 8.0 Time to Open Approved Branch Office

8.1 Branch offices approved in accordance with Section 770(a) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issues the Certificate of Authority. The Commissioner may upon review of the application for such branch office extend the initial opening date to a date greater than one year, ~~if by his review he determines upon a determination~~ that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the branch office unless ~~the branch that office~~ is actually opened for business. Unavoidable delay in opening the branch office due to construction problems ~~or controls~~ or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

### 714 Establishment of a Mobile Branch Office by a Bank or Trust Company 5 Del.C. §770(c)

#### 1.0 Scope

1.1 This regulation establishes procedures for the filing of an application to establish a mobile branch office of a bank or trust company pursuant to Section 770(c) of Title 5 of the Delaware Code and states the manner in which the State Bank Commissioner (the "Commissioner") will review and act upon such applications. An application to establish a branch office pursuant to Section 770(a) of Title 5 that is not a mobile branch is covered separately under Regulation No. 708.

#### 2.0 Application

2.1 An application pursuant to Section 770(c) of Title 5 of the Delaware Code shall be in writing; shall be submitted on such form as the Commissioner may designate from time-to-time for that purpose, and shall include the following:

2.1.1 Name of applying bank or trust company.

2.1.2 The area in which the mobile branch office will operate.

2.1.3 The manner of operation of the mobile branch office.

2.1.4 An explanation of the necessity for the opening of the mobile branch office.

2.1.5 Name, address and phone number of the person(s) to whom inquiries may be directed.

2.2 The Commissioner may designate portions of the applications as non-public and confidential.

2.3 The Commissioner will not deem any application to be filed until the Commissioner has determined that all of the information and documents required by the application have been provided, that the application has been properly executed, and that all fees have been paid.

#### 3.0 Fee

3.1 The application shall be accompanied by a non-refundable investigation fee of two hundred and fifty dollars (\$250.00). Checks shall be made payable to the Office of the State Bank Commissioner.

#### 4.0 Notice

4.1 Upon notification by the Commissioner that the application conforms to the requirements for applications pursuant to Section 770(c) of Title 5 of the Delaware Code and this regulation, the applicant shall cause a single notice of such application to be published in at least two Delaware newspapers of general circulation. The notice shall provide a brief synopsis of the application and state that interested persons may present their views in writing to the Office of the State Bank Commissioner, and shall be in a form to be approved by the Commissioner before publication.

**5.0 Additional Information, Investigation and Hearing**

5.1 In addition to the documents filed in accordance with this regulation, the Commissioner has discretion to require additional information, conduct an investigation, or hold a public hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29 of the **Delaware Code**.

**6.0 Decision**

6.1 No earlier than 20 days after publication of the notice described in Section 4 of this regulation, the Commissioner shall issue a written order approving or disapproving the application. In determining whether to approve the application, the Commissioner shall consider the convenience of the public of this State, and whether there is good and sufficient reason that the bank or trust company should have the mobile branch office.

**7.0 Certificate of Authority**

7.1 A Certificate of Authority shall be issued by the Commissioner for each approved mobile branch office.

**8.0 Time to Open Approved Mobile Branch Office**

8.1 Mobile branch offices approved in accordance with Section 770(c) of Title 5 of the **Delaware Code** and this regulation shall open within one year of the date when the Commissioner issued the Certificate of Authority. The Commissioner may upon review of the application for such mobile branch office extend the initial opening date to a date greater than one year upon a determination that the proposed completion date will exceed one year. In no such instance shall the initial opening date exceed the planned completion date by more than ninety (90) days. Any Certificate of Authority issued by the Commissioner shall be void and of no effect at the expiration of the initial opening date prescribed on approval of the mobile branch office unless the mobile branch is actually opened for business. Unavoidable delay in opening the mobile branch office due to construction problems or other matters beyond the control of the bank or trust company may be taken into consideration and the Commissioner may extend the Certificate of Authority for periods of six months in the event of such circumstances.

**9.0 Changes in Manner or Area of Operation**

9.1 A bank or trust company that is operating an approved mobile branch office shall notify the Commissioner, in writing, in advance of any change in the manner or area of operation of the mobile branch office. Any such change shall be deemed approved unless the Commissioner notifies the bank or trust company otherwise with 20 days of the Commissioner's receipt of that notice. The Commissioner may decline to approve any of the changes, or may direct the bank or trust company to submit a

new application in accordance with this regulation.

**10.0 Operations Log**

After the mobile branch begins operations, the bank or trust company operating that branch must maintain a log of operations, indicating the date, specific location, and a description of each stop (e.g., office, store, residence).

**1113 Election by a Subsidiary Corporation of a Banking Organization or Trust Company to be Taxed in Accordance with Chapter 19 of Title 30****1.0 Qualifications for Election**

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

**2.0 Effect**

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

**3.0 Filing**

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

**4.0 Reporting Requirements**

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

**5.0 Termination of Election**

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

# FINAL REGULATIONS

475

## FORM A

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) State of incorporation of subsidiary corporation:

\_\_\_\_\_  
(c) Federal Employer Identification Number of subsidiary corporation:

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?

yes no

4. Are the activities of the subsidiary corporation within this state confined to the maintenance and management of its intangible investments or of the intangible investments of corporations or business trusts registered as investment companies under the Investment Company Act of 1940 as amended (15 USC 80a-1 et seq.) and the collection and distribution of the income from such investments or from tangible property physically located outside this State within the meaning of 30 Del.C. § 1902(b)(8)?

yes no

5. Is the subsidiary corporation a banking organization or trust company as defined by 5 Del.C. §101?

yes no

6. Describe the principal activities of the subsidiary corporation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Effective date of election:

The undersigned hereby certifies that the undersigned is duly authorized on behalf of the subsidiary corporation to

make an election to be taxed under 30 Del.C. Ch. 19 and that all statements herein are true and correct to the best of the undersign's knowledge and belief.

Date Signature of President, Treasurer or Other Proper Officer Title

Print Name Phone No.

Print Address

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

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

## FORM B

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

Tax Year \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Federal Employer Identification Number of subsidiary corporation:

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

3. Is the subsidiary corporation engaged in the sale, distribution, underwriting of, or dealing in, securities?

yes no



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER FIFTY-EIGHT**

**Re: For The Reestablishment Of The Juvenile  
Justice Advisory Group**

**WHEREAS**, our children are our State's greatest asset, and we must be sensitive not only to their basic medical, educational and family needs, but we must also address those needs so as to minimize our children's involvement with the criminal justice system; and

**WHEREAS**, if we are to reduce crime in the long run, then we must focus our attention on preventing the development of career criminals, that is, we must focus on our children and youth and devise methods to keep them out of the criminal justice system; and

**WHEREAS**, the Juvenile Justice & Delinquency Prevention Act (42 USCS §5633 (2003)), as amended, requires the preparation and implementation of a state plan to coordinate human services to youth and their families in order to ensure effective delinquency prevention and treatment programs; and

**WHEREAS**, the Juvenile Justice & Delinquency Prevention Act requires that such coordination of human services includes all agencies responsible for the delivery of such services as education, economic support, public health and social work, and includes those agencies which directly impact juvenile justice and delinquency prevention such as the police, courts and corrections; and

**WHEREAS**, the Juvenile Justice & Delinquency Prevention Act, as amended, requires that the state plan provides for an Advisory Group which shall comprise of members with specialized knowledge and/or backgrounds, and which purpose is to exercise specific functions; and

**WHEREAS**, in accordance with the requirements of the Juvenile Justice & Delinquency Prevention Act, the Juvenile Justice Advisory Group was reestablished by Executive Order Number Ten of Governor Castle, dated June 6, 1985, the Criminal Justice Council was designated by statute as the State planning agency solely responsible for supervising the preparation and administration of the Delaware plan required by the Juvenile Justice & Delinquency Prevention Act, as amended; and

**WHEREAS**, certain elected, appointed and public officials have specialized knowledge and/or backgrounds, and have traditionally been members of the Advisory Group;

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State

of Delaware, do hereby order and declare as follows:

1. In accordance with the requirements of the Juvenile Justice & Delinquency Prevention Act (42 USCS §5633), as amended, the Juvenile Justice Advisory Group is hereby reestablished.

2. The Juvenile Justice Advisory Group shall:

a. Participate in the development and review of the State's Juvenile Justice Plan prior to submission to the supervisory board for final action;

b. Be afforded an opportunity to review and comment, not later than 30 days after submission to the Advisory Group, on all juvenile justice and delinquency prevention grant applications submitted to the Criminal Justice Council;

c. Advise the Criminal Justice Council of the needs of Delaware for an effective, comprehensive, coordinated approach to juvenile delinquency prevention and treatment, the improvement of the juvenile justice system, as well as provide for the coordination and maximum utilization of existing juvenile delinquency programs and other programs, such as education, health, and welfare within the State of Delaware, as they relate to delinquency prevention and treatment;

d. Make recommendations to the Criminal Justice Council and the General Assembly regarding the improvement and coordination of existing services, identify problems and needs of those existing services, develop new programs to meet the needs identified, and establish priorities in the juvenile justice area;

e. Provide advice in developing, maintaining and expanding delinquency prevention, to divert juveniles from the juvenile justice system and to provide community-based alternatives to juvenile detention and correctional facilities, including:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, half-way houses, home-maker and home health services, and any other designated community-based diagnostic, treatment or rehabilitative services;

(2) Community-based programs and services to work with parents and other family members and to provide family-centered counseling services to maintain and strengthen the family structure so that the juvenile may be retained in his or her home;

(3) Youth-service bureaus and other community-based programs to divert youth from the juvenile justice system or to support, counsel or provide work and recreational opportunities for delinquents and youth in danger of becoming delinquent;

(4) Comprehensive programs of drug and alcohol abuse education and rehabilitation and programs for the treatment and rehabilitation of drug-addicted youth and drug-dependent youth;

(5) Specialized residential treatment programs for dependent-neglected youth who have complex behavior or emotional problems, or who have been victims of child abuse;

(6) Educational programs or supportive services designed to encourage delinquents and other youth to remain in elementary and secondary schools or in alternative learning institutions;

(7) Expanded use of probation and recruitment and training of probation officers, other professional and paraprofessional personnel and volunteers to work effectively with youth;

(8) Statewide programs using probation subsidies, other subsidies, or financial incentives that may include but are not limited to programs designed to:

(a) reduce the number of commitments of juveniles to any form of juvenile facility as a percentage of the State juvenile population;

(b) increase the use of non-secure community-based facilities as a percentage of total commitments to juvenile facilities; and

(c) discourage the use of secure incarceration and detention.

f. Advise the Criminal Justice Council in the development of a State plan which shall monitor the criminal justice system to insure that dependent-neglected youth are not sent to correctional facilities;

g. Ensure that juveniles alleged to be or found to be delinquent shall not be confined, detained or incarcerated in adult jails, lock-ups or correctional facilities, except that contact incidental to admission and booking, unless that juvenile can be kept totally separate from adult inmates, including inmates trustees; and to ensure a policy is in effect which requires individuals who work with both, juvenile and adult inmates, in collocated facilities have been trained and certified to work with juveniles;

h. Provide advice to ensure that assistance will be available on an equitable basis to deal with all disadvantaged youth, including but not limited to females, minority youth, and mentally retarded and emotionally or physically handicapped youth; and

i. Consult and coordinate its activities with those agencies and non-profit organizations which directly impact juvenile justice and delinquency prevention in this State, including the Department of Services for Children, Youth and Their Families, the Family Court of Delaware, the Department of Justice, the Office of the Public Defender, and the Department of Public Safety.

3. The Juvenile Justice Advisory Group shall comprise between 15 and 33 members. A public citizen member of the Group shall be designated by the Governor to serve as Chairperson during the Governor's pleasure. The remaining members of the Advisory Group shall be as follows:

a. The Attorney General;

b. The Public Defender;

c. The Chief Judge of the Family Court;

d. The Secretary of Education;

e. The Director of The Division of Youth and Rehabilitation Services;

f. The Director of The Division of Family Services;

g. Three (3) Delaware State Law Enforcement Officers appointed by the Governor and to serve at her pleasure; one (1) Officer is to be appointed from each County;

h. One (1) Wilmington Law Enforcement Officer appointed by the Governor and to serve at her pleasure;

i. The remaining members shall be appointed by the Governor in accordance with federal requirements and will serve during her pleasure.

4. All meetings of the Juvenile Justice Advisory Group shall be open to the public, and the dates, times and locations of such meetings shall be timely published in an appropriate manner.

5. Executive Order Number Ten, approved by Governor Castle and dated June 6, 1985, is hereby rescinded.

APPROVED THIS 19TH DAY OF JULY, 2004.

Ruth Ann Minner, Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

---

| <b>BOARD/COMMISSION<br/>OFFICE</b>                                      | <b>APPOINTEE</b>   | <b>TERM OF<br/>OFFICE</b>   |
|---|--|---|
| Advisory Council on Planning Coordination                               | Mr. Robert E. Buccini  | 7/19/2007   |
| Advisory Council to the Division of Developmental Disabilities Services | Ms. Gloria A. Duffy  | 5/12/2006   |
| Board of Architects   | Mr. James A. Tevebaugh<br>Ms. Loretta M. Wootten   | 7/19/2007<br>7/19/2007  |
| Board of Chiropractic   | Michael P. Kelman, D.C.  | 7/19/2007   |
| Board of Cosmetology & Barbering  | Ms. Marina T. Civarelli<br>Ms. Madelyn M. Nellius  | 7/23/2007<br>7/19/2007  |
| Board of Massage and Bodywork   | Ms. Mary Jo Verdery  | 7/19/2007   |
| Board of Medical Practice   | Mr. Leo J. Renzette<br>James B. Salva, M.D.  | 7/14/2007<br>7/14/2007  |
| Board of Pharmacy   | Ms. Carolyn Calio<br>Mr. Robb Carter<br>Ms. Nancy E. Weldin  | 7/1/2007<br>7/1/2007<br>7/1/2007  |
| Board of Physical Therapist Examiners                                   | Ms. Denise A. Smith  | 7/20/2007   |
| Board of Plumbing Examiners   | Mr. Marvin C. Sharp  | 7/20/2007   |
| Child Placement Review Board Executive Committee                        | Ms. Barbara H. Blair   | 7/20/2007   |
| Child Placement Review Board-New Castle                                 | Ms. Jennifer Copeland<br>Ms. Kellie Fresolone<br>Ms. Sylvia E. Galarza<br>Ms. Joan C. Herman<br>Ms. Karla B. Jensen<br>Ms. Carolyn Karney<br>Ms. Judith F. Melman<br>Mr. Dana Newman<br>Ms. Bonita E. Porter<br>Ms. Jennifer Rumsey<br>Ms. Robin Ryan<br>Ms. Gertrude Jean Shipp | 7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007 |
| Council on Archives   | Mr. John M. Clayton, Jr.<br>Ms. Margaret R. Dunham<br>Mr. Lewis Purnell<br>Mr. Timothy A. Slavin   | 7/20/2007<br>7/20/2007<br>7/20/2007<br>7/20/2007  |
| Council on Boiler Safety  | Mr. Carl D. Kinney   | 7/15/2005   |
| Council on Housing  | Mr. John L. Walker, Sr.  | 2/25/2005   |

---

**GOVERNOR'S APPOINTMENTS**

| <b>BOARD/COMMISSION<br/>OFFICE</b>                                     | <b>APPOINTEE</b>                  | <b>TERM OF<br/>OFFICE</b>   |
|--|-----------------------------------|-----------------------------|
| Council on Manufactured Housing  | Mr. Kenneth S. Clark, Sr.         | 7/19/2006                   |
|  | Mr. Stevan D. Class               | 7/19/2006                   |
|  | Ms. Marion F. Fetterman           | 7/19/2006                   |
|  | Mr. Brian E. McKinley             | 7/23/2006                   |
|  | Mr. Andrew C. Strine              | 7/19/2006                   |
| Council on Services for Aging and Adults with<br>Physical Disabilities | Ms. Dianne W. Bingham             | 7/19/2007                   |
| Delaware Emergency Medical Services Oversight<br>Council               | Mr. Robert J. Coyle, Jr.          | Pleasure of the<br>Governor |
|  | Mr. Joseph C. Schoell             | Pleasure of the<br>Governor |
| Delaware Health Resources Board  | Mr. Thomas E. Mulhern             | 7/20/2007                   |
| Delaware Heritage Commission, Chair                                    | Mr. Richard B. Carter             | 2/7/2007                    |
| Delaware Heritage Commission   | Mr. James F. Cawley               | 7/20/2007                   |
|  | Ms. Christian D. Wright           | 7/20/2007                   |
| Delaware Manufactured Home Relocation Authority                        | Mr. Caron E. Thompson             | 6/30/2010                   |
| Delaware Open Space Council  | Mr. Louis W. Burton               | 7/19/2008                   |
|  | Mr. William E. Powers, Jr.        | 7/26/2008                   |
| Delaware State Arts Council  | Ms. Theda D. Blackwelder          | 7/19/2007                   |
|  | Mr. Timothy J. Clinch             | 7/19/2007                   |
|  | Mr. C. Lawler Rogers, Sr.         | 7/19/2007                   |
|  | Ms. Theresa M. Shipley            | 7/19/2007                   |
| Delaware State Boundary Commission                                     | Ms. Lisa A. Lloyd                 | Pleasure of the<br>Governor |
|  | Mr. Charles A. Salkin             | Pleasure of the<br>Governor |
| Dover Housing Authority  | Mr. George M. Records, Jr.        | 7/26/2010                   |
| Family Court in Kent County, Associate Judge                           | The Honorable William N. Nicholas | 7/9/2016                    |
| Governor's Council on Hispanic Affairs, Chair                          | Mr. Fernando N. Guajardo          | Pleasure of the<br>Governor |
|  | Mr. Eli Oriol                     | 7/20/2007                   |
|  | Ms. Yvette Santiago               | 7/20/2007                   |
| Governor's Council on Lifestyles & Fitness                             | Ms. Marianne B. Carter            | 7/20/2006                   |
|  | Ms. Debbie I. Chang, M.P.H.       | 7/20/2006                   |
|  | Mr. Alexander Peterson, III       | 7/20/2006                   |

---

---

**GOVERNOR'S APPOINTMENTS**

---

481

| <b>BOARD/COMMISSION<br/>OFFICE</b>                        | <b>APPOINTEE</b>         | <b>TERM OF<br/>OFFICE</b>   |
|---|--------------------------|-----------------------------|
| Governor's Task Force on School Libraries                 | Ms. Sylvia M. Stevens    | Pleasure of the<br>Governor |
| Human Relations Commission                                | Mr. Randal L. Perry      | 10/20/2004                  |
| Newark Housing Authority                                  | Ms. Shirley F. Anderson  | 7/26/2010                   |
| Outer Continental Shelf Policy Committee                  | Mr. John H. Talley       | Pleasure of the<br>Governor |
| Recycling Public Advisory Council                         | Mr. Paul R. Bickhart     | 7/20/2007                   |
| Riverfront Development Corporation, Board of<br>Directors | Mr. Allen DeWalle        | Pleasure of the<br>Governor |
| State Emergency Response Commission                       | Mr. James Lee            | 4/20/2006                   |
| State Rehabilitation Advisory Council                     | Mr. Bruce C. Crouch      | 2/24/2006                   |
| Worker's Compensation Advisory Council                    | Mr. Samuel E. Lathem     | 7/19/2007                   |
| Workforce Investment Board                                | Mr. Fernando N. Guajardo | Pleasure of the<br>Governor |

**DEPARTMENT OF EDUCATION**

The Department of Education proposes to enter into three Interagency Agreements. The Agreements are:

1. Interagency Agreement between the Department of Services for Children, Youth and Their Families, and the Exceptional Children and Early Childhood Education Group, Delaware Department of Education; Local Education Agencies; and Charter Schools Serving Children with Disabilities.
2. Interagency Agreement between the Division of Developmental Disabilities Services, Department of Health and Social Services; Exceptional Children and Early Childhood Education Group, Delaware Department of Education; Local Education Agencies; and Charter Schools Serving Children with Disabilities.
3. Interagency Agreement between the Division of Vocational Rehabilitation, Department of Labor; Exceptional Children and Early Childhood Education Group, Delaware Department of Education; Local Education Agencies; and Charter Schools Serving Children with Disabilities.

The purpose of these agreements is to ensure the implementation of a free appropriate public education for children with disabilities who are placed in programs by the Divisions of DSCYF (Agreement 1) or are transitioning between school and adult services (Agreements 2 and 3). The Department has prepared and plans to enter into these Agreements as part of its general supervisory responsibility and obligation to ensure services under the Individuals with Disabilities Education Act (20 U.S.C. §1412(a)(11) and 1412(a)(12); 34CFR §300.142 and 300.600) and Chapter 31 of Title 14 of the Delaware Code. The Agreements outline the roles and responsibilities of the participating agencies.

The Department proposes to add regulations for a Primary and Secondary IEP and the participation of the Career Technical Teacher Coordinator in IEP meetings when students may participate in a cooperation education program or a diversified occupations program. In addition, the Department proposes to delete the note regarding corporal punishment.

The sixty day public comment period for these agreements and regulations extends from September 1, 2004 through October 30, 2004. Written comments should be forwarded to:

Dr. Martha Brooks, Director  
Exceptional Children and Early Childhood Education

Group Delaware Department of Education  
P.O. Box 1402  
Dover, DE 19903  
or  
mbrooks@doe.k12.de.us

Two hearings to receive public comment are scheduled for:

Thursday, September 28, 2004  
Hodgson Technical High School  
2575 Glasgow Avenue  
Elevated Classroom – 2nd Floor  
Newark, DE  
7:00 p.m.

Thursday, September 30, 2004  
Milford High School Auditorium  
1019 North Walnut Street  
Milford, DE  
7:00 p.m.

**I. Title of the Agreement**

This Agreement shall be known as the Interagency Agreement between the Division of Developmental Disabilities Services, Department of Health and Social Services; Exceptional Children and Early Childhood Group, Delaware Department of Education; Local Education Agencies; and Charter Schools Serving Children with Disabilities. 34 CFR §300.142

**II. Parties Involved and Their Authority to Provide Special Education and Transition Services [34 CFR§300.142 (b)]**

The parties to this Interagency Agreement are the Division of Developmental Disabilities Services (DDDS), Department of Health and Social Services (DHSS); the Exceptional Children and Early Childhood Group, Delaware Department of Education (DDOE); Local Education Agencies (LEAs); and Charter Schools. The Delaware Department of Education ensures that each educational program for children and youth with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision and direction of the State Educational Agency (SEA), in accordance with the Federal Individuals with Disabilities Education Act (IDEA), Chapter 31 of Title 14 of the *Delaware Code*, and the *State Administrative Manual for Special Education Services* (AMSES). The Division of Developmental Disabilities Services provides services to those individuals who have mental retardation or certain related disabilities specified by the Division in its

eligibility definition. Persons participating in programs operated through DDDS do so under regulations, policies and procedures issued by DDDS. This Agreement delineates responsibility for transition services provided to youth with disabilities. It does not expand or alter DDDS's responsibility for services to persons who are over the age of 21 or otherwise ineligible for special education and related services.

### **III. Purpose of the Agreement**

It is hereby agreed that the Division of Developmental Disabilities Services and the Delaware Department of Education are committed to transitioning eligible individuals from an education-based system to an adult services system in a programmatically sound manner, which denotes individual choice and promotes a continuum of services to the individual. This Agreement is designed to facilitate the transition of all youth enrolled in LEAs or Charter Schools who are eligible for DDDS services.

The DDDS and the DDOE enter into this Agreement for the purpose of improving the quality and coordination of services for youth who meet DDDS eligibility criteria as they make the transition from school to the adult community in Delaware. The transition population is herein defined as those youth with disabilities between the ages of 14 (or eighth grade, whichever comes first) and 21 inclusive, who are students enrolled in an LEA or Charter School who meet the DDDS eligibility criteria.

This Agreement is between the DDDS, the DDOE, LEAs, and Charter Schools and is not intended to create any enforceable rights for youth or their parents or any agency not a party to this Agreement.

### **IV. Roles and Responsibilities of Each Agency, Including Access to Records and Transfer Procedures, Implementation, Dissemination and Training Activities, Funding Amounts, and Sources [34 CFR§300.142(a), (b) & (c)(2)]**

#### **Joint Responsibilities of the Division of Developmental Disabilities Services and the Delaware Department of Education**

It is hereby agreed that the DDDS and DDOE, through a statewide interagency effort, shall:

1. Exchange information relevant to effective interagency delivery of services during and after the transition years. Included in this information will be an Annual Transition Staff Listing of all transition contacts in DDDS, DDOE, LEA, and Charter Schools.
2. Provide data that will allow the DDDS to develop plans and budgets for post school day

and residential services.

3. Provide assistance to LEA, Charter School, and DDDS staff in the implementation of this Agreement.
4. Develop strategies to promote parent awareness of the transition process.
5. Review vocational assessment approaches to ensure that transition planning needs of youth with disabilities and the requirements of the participating agencies, including the Division of Vocational Rehabilitation, are met.
6. Develop an interagency tracking system to provide feedback to the schools and to aid effective long range planning for program development and improvement.
7. Collaborate with other Departments, Divisions, and agencies responsible for transition age youth so that all transition services are coordinated.
8. Appoint staff to the State Transition Advisory Council to monitor, plan, and implement activities to support the transition planning needs of students with disabilities.
9. Promote an individual student-centered approach to transition that includes timely and practical guidance on realistic choices and discrete steps toward achievement of vocational/day service goals.
10. Identify, plan, and fund joint inservice training, to include orientation for new DDDS and school transition personnel and ongoing training as needed for all staff.
11. Plan for students served through the Interagency Collaborative Team (ICT) who meet the DDDS eligibility criteria and who will require residential resources upon completion of their education.

#### **Delaware Department of Education, LEA and Charter Schools, and the Division of Developmental Disabilities Services**

The Department of Education has the overall responsibility to ensure that transition planning for students with disabilities is occurring in the State of Delaware and is in compliance with federal and State requirements.

Transition planning is a necessary part of the Individualized Education Program (IEP) to prepare students with disabilities for independence in the community. During a student's eighth grade year or at age 14, whichever occurs first, or before if the IEP Team determines appropriate, and continuing through high school graduation, or age 21, whichever occurs first, transition services planning is part of the IEP for each student receiving special education services. Every effort will be made to include the student and the

parent/guardian in the planning for individualized transition services. Transition service planning serves as a guide to make the most effective use of those school years by addressing the following major life areas and individual characteristics:

1. Instruction.
2. Community experience.
3. Employment and other post-school objectives.
4. Daily living skills and functional vocational evaluation, as appropriate.
5. Aptitudes.
6. Interests.
7. Preferences.
8. Other (i.e., work history, job samples, learning styles, transportation needs, linkages to other adult service providers).

The Division of Developmental Disabilities Services, in collaboration with LEAS and Charter Schools, will assist in the process of transition services planning.

1. During the ninth grade year (or age 16, whichever comes first) information is shared with the parent/guardian of all youth with developmental disabilities on the following:

- Post-Secondary Options;
- Family Support Options;
- Residential Options;
- Day Service/Employment Options, including supported employment;
- Medical Resources, including Medicaid;
- Recreation resources;
- Advocacy resources;
- Transfer of Rights at Age of Majority and Guardianship Issues;
- Supplemental Security Income;
- Other, as appropriate for the individual family.

As part of the Individualized Education Program (IEP) process, a transition services plan is developed for each youth with a disability.

2. Each year, the DDDS, in cooperation with LEAs and Charter Schools, will review all students 16 years of age to determine those youth who most likely meet the eligibility requirements of DDDS. DDDS will provide the schools with an initial indication concerning the probability that the individual will meet the Division's eligibility requirements for services.

3. During the student's ninth grade year, or age 16, whichever comes first, the DDDS Transition Coordinator/Designee will be invited to attend the annual IEP meetings for all students who will most likely be eligible for DDDS services. At that meeting, the DDDS intake process will be fully explained to the youth and parent. A Release of

Information will be obtained prior to the IEP meeting for all students. Access to, and transfer of, individual records will be carried out with the informed consent of the youth, parent or guardian, as appropriate, and in compliance with the Family Education Rights and Privacy Act (FERPA), the Health Information Portability and Accountability Act (HIPAA), and the IDEA and State law and regulations.

4. The following identifies responsibility for the required referral information:

#### LEA/Charter School Responsibility:

- referral form;
- Social Security number;
- driver license, State ID card;
- current and valid psychological information required by DDDS eligibility criteria to include cognitive and adaptive behavior assessments;
- basic medical/nursing information;
- Medicaid status;
- Vocational Assessment, which includes:
  - vocational strengths and weaknesses
  - interests – likes and dislikes
  - vocational training and employment experiences
- current IEP;
- current OT, PT, Speech reports, as appropriate;
- Behavior Management/Counseling reports, as appropriate; and
- other, as appropriate (i.e., transportation needs)

#### DDDS Responsibility

- Release of Information Form(s);
- Application;
- Client Profile;
- Additional Medical, if needed;
- SSI/SSDI status; and
- Other, as appropriate.

5. For those individuals and/or parent/guardians who decide to apply for services, the DDDS will complete the intake and eligibility process within 90 days of receipt of completed application materials, 45 days for Medicaid recipients. Upon completion of an intake determination of eligibility, the student and parent/guardian shall be informed. At the time of intake, DDDS will ask whether the student and parent/guardian wishes to release the eligibility determination to the student's school. If consent to release the eligibility is given, DDDS will forward a copy of the eligibility to the student's school. For youth who are eligible, service needs, options and plans will be reviewed with the individual and family within 60 days of eligibility determination.

6. If the intake process results in a determination that the youth is not eligible, the individual and parent/guardian will be notified, as will the youth's school program if release of information is granted by the individual and parent/guardian. A description of the DDDS appeals process and recommendations for other service options will be provided to the individual and family/guardian.

7. Each year, the LEA/Charter School Transition Team, as defined in the Division of Vocational Rehabilitation (DVR)/Delaware Department of Education/Local Education Agency/Charter School Interagency Agreement, and including the DDDS representative, will meet to review all youth eligible for DDDS services who are about to enter their final year of school. At these meetings, decisions will be made related to the employment status of all students. Those youth appropriate for DVR services will be identified at this meeting, and the DVR counselor will begin the intake process for those youth. The DDDS representative will work closely with the DVR counselor concerning those youth who are eligible for services from both agencies so that appropriate sources of follow-up services can be identified.

8. A DDDS representative will attend the student's IEP meeting during the final year in school. The DDDS representative, in conjunction with the IEP team, will develop a transfer plan, which will be incorporated as an attachment to the IEP to specify the individual's initial linkage with DDDS.

9. Adult services and supports may be initiated at any time during the final year of school or earlier with the mutual agreement of all parties. If it is determined that adult services and supports should be initiated prior to the end of the school year, the school will be responsible for funding through August 31. DDDS funding shall begin on September 1<sup>st</sup>.

10. Services and supports provided by DDDS are contingent upon funding availability based on DDDS established priorities. DDDS will establish the array and extent of services available and the priority of individuals accessing services.

#### **V. Procedures to Resolve Disputes Regarding Program and Fiscal Issues**

This section establishes procedures for resolving interagency disputes between the parties to this agreement concerning the terms of the agreement, including disputes over interagency reimbursement and service coordination.

1. All attempts should be made to resolve disputes at the lowest operational level (at the School, School District, or DDDS office level).

2. When disputes cannot be resolved at the lowest operational level, they shall be referred, in writing, to the

State Director of the Exceptional Children and Early Childhood Group, DDOE; to the State Director, Division of Developmental Disabilities (DDDS); and the Superintendent of the School District or CEO of the Charter School involved. These individuals will review the situation and determine how the dispute should be resolved. Their decision shall be shared, in writing, with the parties involved in the dispute within thirty days (30) of receipt of the request.

3. If the dispute cannot be resolved as described in V.2, the dispute shall be referred in writing to the Cabinet Secretary, DDOE; the Cabinet Secretary, Department of Health and Social Services (DHSS); and the President of the Chief School Officer's Association. The dispute shall be resolved by a majority vote of the Cabinet Secretaries and the President. Further, any party disagreeing with the decision reached in step V.2 may submit a written request for review within thirty (30) days of the decision to the Cabinet Secretary, DDOE; the Cabinet Secretary, DHSS; and the President of the Chief School Officer's Association, or other member of the Chief School Officer's Association, outlining their specific disagreement with the decision. The Cabinet Secretaries' and the President's decision shall be final and binding on all parties and shall be communicated, in writing, to all parties within thirty (30) days of referral of the matter to them or request for review.

4. This Interagency Agreement does not restrict or otherwise limit any additional rights or remedies any party may have under state or federal law, nor extend the rights or remedies of one party to the other. This Interagency Agreement does not restrict or otherwise limit the Delaware Department of Education's general supervision authority to ensure that the requirements of state and federal law concerning the education of children with disabilities are carried out.

#### **VI. Agreement Review**

This Agreement shall be effective immediately upon the written signature of all parties and shall remain in effect until a new Agreement is signed or is otherwise terminated in accordance with this Section. This Agreement shall be reviewed annually by appropriate personnel from the Department of Education, the Department of Health and Social Services, Division of Developmental Disabilities, and the Local Education Agencies and Charter Schools. Parties to this Agreement may request that all or part of it be renegotiated at any time, for good cause, upon the written request of any of the participating agencies. This Agreement may be terminated by any party upon ninety (90) days written notice.

**SIGNATURE AND TITLE OF EACH AUTHORIZED  
AGENCY AND SCHOOL DISTRICT  
ADMINISTRATOR**

Mrs. Valerie A. Woodruff, Secretary of Education  
Department of Education

Mr. Vincent P. Meconi, Secretary  
Department of Health and Social Services

Dr. Nancy J. Wilson, Associate State Secretary  
Curriculum & Instructional Improvement  
Department of Education

Ms. Marianne Smith, Director  
Division of Developmental Disabilities Srv.  
Department of Health and Social Services

Dr. Martha Brooks, State Director  
Exceptional Children and Early Childhood Education  
Department of Education

Mr. Tony J. Marchio, Superintendent  
Appoquinimink School District

Dr. Harold Roberts, Superintendent  
Caesar Rodney School District

Dr. Michael D. Thomas, Superintendent  
Capital School District

Dr. George Meney, Superintendent  
Colonial School District

Mrs. Lois M. Hobbs, Superintendent  
Indian River School District

Dr. Bruce Harter, Superintendent  
Brandywine School District

Dr. Dane A. Brandenberger, Superintendent  
Cape Henlopen School District

Dr. Joseph Wise, Superintendent  
Christina School District

Dr. George E. Stone, Superintendent  
Delmar School District

Mr. Keith Duda, Superintendent  
Laurel School District

Dr. Steve Godowski, Superintendent

New Castle County Vo-Tech School District

Dr. Robert Andrzejewski, Superintendent  
Red Clay Consolidated School District

Mrs. Deborah D. Wicks, Superintendent  
Smyrna School District

Dr. Kevin E. Carson, Superintendent  
Woodbridge School District

Dr. Daniel Curry, Superintendent  
Lake Forest School District

Dr. Robert D. Smith, III, Superintendent  
Milford School District

Dr. Diane G. Sole, Superintendent  
Polytech School District

Dr. Russell H. Knorr, Superintendent  
Seaford School District

Dr. Patrick Savini, Superintendent  
Sussex Technical School District

**Charter Schools**

Mr. Leonard Litzi  
Academy of Dover Charter School

Mr. Allen Zipke  
Campus Community Charter School

Mr. Ron Russo  
Charter School of Wilmington

Mr. Will Robinson  
East Side Charter School

Ms. Catherine Sielski  
Kuumba Academy Charter School

Ms. Martha Clark  
MOT Charter School

Ms. Linda M. Fleetwood  
Positive Outcomes Charter School

Dr. Nancy Feichtl  
Sussex Academy of Arts and Sciences

Mr. Charles Baldwin  
Delaware Military Academy

Mr. Charles Hughes  
Thomas A. Edison Charter School

Mr. John Taylor  
Marion T. Academy Charter School

Mr. Greg Meece  
Newark Charter School

Ms. Audrey Erschen  
Providence Creek Academy  
Charter School

Dr. Nancy Feichtl  
Sussex Adacemy of Arts and Sciences

### **I. Title of the Agreement**

This Agreement shall be known as the Interagency Agreement between the Division of Vocational Rehabilitation, Department of Labor; Exceptional Children & Early Childhood Education Group, Delaware Department of Education; Local Education Agencies; and Charter Schools Serving Children with Disabilities. 34 CFR §300.142

### **II. Parties Involved and Their Authority to Provide Special Education and Transition Services Interagency Agreements between the Department of Education and other agencies [34 CFR §300.142 (b)]**

The parties to this Interagency Agreement are the Division of Vocational Rehabilitation (DVR), Department of Labor (DOL); the Exceptional Children and Early Childhood Education Group, Delaware Department of Education (DDOE); Local Education Agencies (LEAs); and Charter Schools. The Department of Education ensures that each educational program for youth with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision and direction of the State Educational Agency (SEA), in accordance with the Federal Individuals with Disabilities Education Act (IDEA), Chapter 31 of Title 14 of the *Delaware Code* and the State *Administrative Manual for Special Education Services* (AMSES). The Division of Vocational Rehabilitation is authorized to provide transition services to youth with disabilities, ages 16-21, in accordance with transition requirements of the Rehabilitation Act of 1973, as amended in the Workforce Investment Act of 1998, Public Law 105-220 and 34 CFR Part 361, State Vocational Rehabilitation Services Program; Final Rule. The Local Education Agencies and Charter Schools carry the primary responsibility for the education of children and youth with

disabilities enrolled in the school districts and Charter Schools, in accordance with the rules and regulations of the IDEA and the DDOE. This Agreement is written specifically to delineate transition services provided to youth with disabilities. For purposes of this Agreement, the term “youth with disabilities” means students ages 16 to 21, eligible to receive special education and related services as children with disabilities under the IDEA and implementing state law. 34 CFR, Part B

### **III. Purpose of the Agreement**

It is hereby agreed that the Division of Vocational Rehabilitation and the Delaware Department of Education are committed to transitioning individuals potentially eligible for DVR services from the receipt of educational services in school to the receipt of vocational rehabilitation services in a programmatically sound manner which reduces the disruption of services to the individual. The involved agencies will work to ensure that youth with disabilities receive benefit from the transition services for which they are eligible. Eligibility for DVR services is based on the documented presence of a physical or mental disability which constitutes or results in a substantial impediment to employment; and requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment.

In general, the education and vocational training of students ages 3 to 21 who are eligible for special education and related services is the responsibility of the education system prior to graduation. Although DVR maintains no absolute lower age limit for eligibility, vocational rehabilitation services are generally offered to youth between the ages of 16 and 21. DVR will provide services for those students who are approaching, or are of working age (out-of-school) and who are determined by DVR to be eligible for services. The agencies agree to work cooperatively to serve students as they move from one agency to the other. The student may refuse the services from either agency; however, neither agency is obligated to duplicate the services offered by the responsible agency.

This Agreement is between the DVR and the DDOE, LEAs and Charter Schools and is not intended to create any enforceable rights for youth or their parents or any agency not a party to this Agreement. This agreement does not diminish or alter any rights of, or obligations to, youth with disabilities under federal or state law.

**IV. Roles and Responsibilities of Each Agency, Including Access to Records and Transfer Procedures, Implementation, Dissemination and Training Activities, Funding Amounts, and Sources [34 CFR§300.142(a), (b) & (c)(2)]**

**Joint Responsibilities of the Division of Vocational Rehabilitation and the Delaware Department of Education**

It is hereby agreed that the DVR and DDOE, through a statewide interagency effort, shall support the acquisition of vocational services and gainful employment by youth with disabilities by:

1. Exchanging information relevant to effective interagency delivery of services during and after the transition years. Included in this information will be an Annual Transition Staff Listing of all transition contacts in DVR, DOE, the LEAs and Charter Schools, including school staff responsible for students with Section 504 plans.
2. Working with LEA and Charter School staff and DVR staff to implement this Agreement at the local level.
3. Reviewing vocational assessment approaches to ensure that transition planning needs of youth with disabilities and the requirements of the participating agencies are met.
4. Collaborating with other departments, divisions, and agencies responsible for transition age youth, so that all transition services are coordinated.
5. Working in partnership to develop additional employment training options for youth with disabilities as an ongoing effort.
6. Identifying, planning and funding joint inservice training, to include orientation for new DVR and school transition personnel and ongoing training, as needed, for all staff.
7. Developing and disseminating an Annual DVR/DOE Transition Report that monitors outcome measures to evaluate and improve the effectiveness of transition services to youth with disabilities.
8. Appointing staff to the State Transition Advisory Council to monitor, plan, and implement activities to support the transition planning needs of youth with disabilities.
9. Identifying and addressing gaps in vocational services in an effort to meet the vocational needs of students while in school and upon leaving school.
10. Developing, implementing, and monitoring a plan of action to address the needs of youth with disabilities at high risk of dropping out of school.

11. Promoting an individualized, student-centered approach to transition that includes timely and practical guidance on realistic choices and discrete steps toward achievement of vocational goals.

**Division of Vocational Rehabilitation**

The goal of DVR is to ensure the provision of an appropriate program of vocational rehabilitation services for eligible transitioning youth with disabilities. In order to meet this goal, DVR will:

1. Assign a DVR counselor to each high school program in a LEA, Charter School or other public agency operating educational programs. DVR will assure that each counselor develops and maintains a regular schedule for their assigned high school programs.
2. Provide a list at least annually to the State Transition Council and the LEAs and Charter Schools, of all DVR counselors assigned to each high school program in the State. Each DVR counselor will meet at least annually with school administrators to review summary information on students served.
3. Provide necessary resources to support the DVR Counselor as an active member of the School Transition Team.
4. Support the DVR Counselor in a consultant role to school staff by:
  - a. maintaining a cooperative working relationship with DOE, LEAs, and schools to provide a supportive environment for Counselors;
  - b. developing and implementing, through approved service providers, additional vocational training programs and employment initiatives when needs are identified by the District Transition Team and agreed upon by DVR;
  - c. working with DOE and the school districts to address the needs of youth with disabilities at risk of dropping out of school;
  - d. providing outreach services to students in grades 9 - 12 who are identified as potential referrals to DVR as a result of secondary program planning. Outreach includes, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals.
5. Work actively with school staff to complete the referral process and develop an Individualized Plan for Employment (IPE) that is coordinated with the student's IEP for each eligible student

prior to the end of the student's last year in school. The IPE will be developed in consideration of the student's IEP, and coordinated with the IEP in terms of goals, objectives, and services identified in the IEP.

6. Ensure that DVR Counselors attend IEP transition service planning meetings for students identified and referred for services at the appropriate time(s) prior to school exit.
7. Ensure DVR Counselors attend the IEP meetings of students referred for services who are entering their final year in school. DVR Counselors will coordinate their attendance at IEP meetings with the school staff in charge of transition planning.
8. Purchase assistive technology (AT) previously obtained by a school district for the use of a youth with disabilities. In assessing the appropriateness of purchase, DVR on a case by case basis will consider the following factors: (a) vocational relevance of AT; (b) impediments to implementation of IPE without AT; (c) customization of AT; (d) remaining useful life of AT; (e) adequacy of AT in meeting client's prospective needs; (f) replacement cost of AT from alternate sources; and (g) availability and benefits of purchasing different or alternative AT.
9. Place youth with disabilities in jobs based upon their personal interests, abilities, and preferences.
10. Ensure DVR Counselors, with assistance from school personnel, identify and maintain contact with the students who drop-out of school, whenever possible, and offer services, including adult educational services, to those who are eligible and interested.
11. Provide information to DOE and the LEAs and Charter Schools on the numbers of referrals and status of all post-school students it serves.

### **Delaware Department of Education**

The Delaware Department of Education has the overall responsibility to ensure that transition planning for youth with disabilities in the public education system is occurring in the State of Delaware and is in compliance with federal and State requirements.

Transition planning is a necessary part of the Individualized Education Program (IEP) to prepare youth with disabilities for independence in the community. During a student's eighth grade year or at age 14, whichever occurs first, or before if the IEP team determines appropriate, and continuing through high school graduation or age 21, whichever occurs first, transition services planning will become part of the IEP for each student receiving special education. Every effort will be made to include the student

and the parent/guardian in the planning for individualized transition services. Transition service planning serves as a guide to make the most effective use of those school years by addressing the following major life areas and individual characteristics:

1. Instruction.
2. Community experience.
3. Employment and other post-school objectives.
4. Daily living skills and functional vocational evaluation, as appropriate.
5. Aptitudes.
6. Interests.
7. Preferences.
8. Other (i.e., work history, job samples, learning styles, transportation needs, linkages to other adult service providers).

### **LEAs and Charter Schools**

A major goal of the LEAs and Charter Schools is to provide an effective secondary program of education for youth with disabilities and to ensure that they are linked in advance to appropriate adult services as they leave the school system. In order to meet this goal, the LEAs and Charter Schools will:

1. Identify a Transition Team to oversee and facilitate the transition process for the district. The district will appoint a Transition Coordinator and other school staff to the Transition Team. The members of the Team should include:
  - DVR Counselor(s);
  - Guidance Counselor(s)/Educational Diagnostician(s);
  - Parent Representative(s);
  - Special Education Representative;
  - Vocational Education Representative;
  - Division of Developmental Disabilities Services Representative;
  - Section 504 Representative;
  - Others as determined by the respective LEAs and Charter Schools (i.e., Nurse, local employers, other agencies).
2. The Transition Team will:
  - a. ensure transition outreach efforts to youth with disabilities and their parents are timely and effective;
  - b. identify and address issues that adversely affect students' transition planning needs;
  - c. provide input to the State Transition Council concerning the following:
    - i. training needs;
    - ii. factors adversely affecting transition on a regional and state-wide basis;

- iii. enrollment and outcome information on youth with disabilities;
  - d. serve as an information resource on transition to the LEAs, Charter Schools, students and their families;
  - e. coordinate, plan, and implement transition activities at the district and school level;
  - f. provide names, at least annually, of the LEA and Charter School's assigned Transition Coordinator to the State Transition Council;
  - g. promote implementation of an overall transition system that is individualized, timely, effective, and consistent with State standards.
3. Invite DVR Counselors and other representatives of appropriate agencies to participate in District Transition Team planning meetings to develop, implement, and monitor the transition process.
  4. Identify annually a district and school transition contact person and person responsible for Section 504 plans for the assigned DVR counselor at each high school program.
  5. Include the DVR Counselor in transition service planning for each student no later than the IEP meeting prior to his/her final year of school.
  6. Identify locations in the school buildings for the DVR counselor to meet with students and staff during their regularly scheduled visits.
  7. Maintain communication between the secondary program and parents about DVR services.
  8. Ensure informed written consent for release of information is obtained from adult students or parents of minor students prior to sharing information with the DVR Counselor. All sharing of student records will be in compliance with the Family Education Rights and Privacy Act (FERPA), the Health Information Portability and Accountability Act (HIPAA), the IDEA and State law and regulations.
  9. Make referrals to appropriate adult service agencies based on individual needs of the student. Referrals to DVR should include youth with disabilities who could benefit from such services.
  10. Collect and provide referral information to DVR Counselors that includes:
    - a. referral form;
    - b. signed Release of Information form;
    - c. Social Security number;
    - d. driver license, State ID card;
    - e. evaluation reports, which may include observations, other information from education officials, and psychological evaluations;
    - f. Academic Achievement test data;
    - g. substantiating medical information on youth

- with mental or physical disabilities, if available;
- h. vocational evaluation(s);
- i. copy of the IEP, which includes the transition planning component;
- j. copy of high school transcript;
- k. other information as determined through the Transition Team process (i.e., transportation needs).

11. Identify current assistive technology and make suggestions for anticipated vocationally relevant assistive technology.
12. School personnel, as part of the LEA and Charter School's responsibility in the transition services planning process, will inform students and their parents of the availability of DVR services. The interest of the student and parent or guardian in the referral to DVR will be determined and documented.
13. The IEP Team will facilitate referrals to DVR. A member of the school staff and the student will initiate the formal referral for services to DVR following the IEP Team's determination that this would be a desirable and appropriate transition avenue. DVR referrals are encouraged as early as the spring prior to the student's last year in school. Once a determination of eligibility is made by DVR, the student, parent or guardian, as appropriate, and the school shall be notified of the results.

#### **V. Procedures to Resolve Disputes Regarding Program and Fiscal Issues**

1. All attempts should be made to resolve disputes at the lowest operational level (at the School, School District and/or DVR office level).
2. When disputes cannot be resolved at the lowest operational level, they shall be referred, in writing, to the State Director of the Exceptional Children and Early Childhood Education Group, DDOE; to the State Director, Division of Vocational Rehabilitation, DOL; and the Superintendent of the School District or CEO of the Charter School involved. These individuals will review the situation and determine how the dispute should be resolved. Their decision shall be shared, in writing, with the parties involved in the dispute within thirty (30) days of receipt of the request.
3. If the dispute cannot be resolved as described in V.2, the dispute shall be referred in writing to the Cabinet Secretary, DDOE; the Cabinet Secretary, DOL; and the President of the Chief School Officer's Association. Further, any party disagreeing with the decision reached in step V.2 may submit a written request for review within thirty (30) days of the decision to the Cabinet Secretary, DDOE; the

Cabinet Secretary, DOL; and the President of the Chief School Officer's Association, or other member of the Chief School Officer's Association, outlining their specific disagreement with the decision. The Cabinet Secretaries' and the President's decision shall be final and binding on all parties and shall be communicated, in writing, to all parties within thirty (30) days of referral of the matter to them or request for review.

4. This Interagency Agreement does not restrict or otherwise limit any additional rights or remedies any party may have under state or federal law, nor extend the rights or remedies of one party to the other. This Interagency Agreement does not restrict or otherwise limit the Delaware Department of Education's general supervision authority to ensure that the requirements of state and federal law concerning the education of children with disabilities are carried out.

#### **VI. Agreement Review**

This Agreement shall be effective immediately upon the written signature of all parties and shall remain in effect until a new Agreement is signed or is otherwise terminated in accordance with this Section. This Agreement shall be reviewed annually by appropriate personnel from the Department of Education, the Department of Labor, Division of Vocational Rehabilitation, and the Local Education Agencies and Charter Schools. Parties to this Agreement may request that all or part of it be renegotiated at any time, for good cause, upon the written request of any of the participating agencies. This Agreement may be terminated by any party upon ninety (90) days written notice.

#### **SIGNATURE AND TITLE OF EACH AUTHORIZED AGENCY AND SCHOOL DISTRICT ADMINISTRATOR**

##### **Agency**

Mrs. Valerie A. Woodruff, Secretary of Education  
Department of Education

Dr. Nancy J. Wilson, Associate State Secretary  
Curriculum & Instructional Improvement  
Department of Education

Dr. Martha Brooks, State Director  
Exceptional Children and Early Childhood Education  
Department of Education

Mr. Harold E. Stafford, Secretary  
Department of Labor

Ms. Andrea Guest, Director

Division for Vocational Rehabilitation  
Department of Health and Social Services

##### **School Districts**

Mr. Tony J. Marchio, Superintendent  
Appoquinimink School District

Dr. Harold Roberts, Superintendent  
Caesar Rodney School District

Dr. Michael D. Thomas, Superintendent  
Capital School District

Dr. George Meney, Superintendent  
Colonial School District

Mrs. Lois M. Hobbs, Superintendent  
Indian River School District

Mr. Keith Duda, Superintendent  
Laurel School District

Dr. Bruce Harter, Superintendent  
Brandywine School District

Dr. Dane A. Brandenberger, Superintendent  
Cape Henlopen School District

Dr. Joseph Wise, Superintendent  
Christina School District

Dr. George E. Stone, Superintendent  
Delmar School District

Dr. Daniel Curry, Superintendent  
Lake Forest School District

Dr. Robert D. Smith, III, Superintendent  
Milford School District

Dr. Steve Godowski, Superintendent  
New Castle County Vo-Tech School District

Dr. Robert Andrzejewski, Superintendent  
Red Clay Consolidated School District

Mrs. Deborah D. Wicks, Superintendent  
Smyrna School District

Dr. Kevin E. Carson, Superintendent  
Woodbridge School District

Dr. Diane G. Sole, Superintendent

Polytech School District

Dr. Russell H. Knorr, Superintendent  
Seaford School District

Dr. Patrick Savini, Superintendent  
Sussex Technical School District

### Charter Schools

Mr. Leonard Litzl  
Academy of Dover Charter School

Mr. Ron Russo  
Charter School of Wilmington

Mr. Will Robinson  
East Side Charter School

Ms. Catherine Sielski  
Kuumba Academy Charter School

Ms. Martha Clark  
MOT Charter School

Ms. Linda M. Fleetwood  
Positive Outcomes Charter School

Mr. Allen Zipke  
Campus Community Charter School

Mr. Charles Baldwin  
Delaware Military Academy

Mr. Charles Hughes  
Thomas A. Edison Charter School

Mr. John Taylor  
Marion T. Academy Charter School

Mr. Greg Meece  
Newark Charter School

Ms. Audrey Erschen  
Providence Creek Academy  
Charter School

Dr. Nancy Feichtl  
Sussex Academy of Arts and Sciences

### I. Title of the Agreement

This Agreement shall be known as the Interagency Agreement between the Department of Services for

Children, Youth and Their Families, and the Exceptional Children and Early Childhood Education Group, Delaware Department of Education; Local Educational Agencies; and Charter Schools Serving Children with Disabilities. 34 CFR§300.142

### II. Parties Involved and Their Authority to Provide Special Education and Related Services [34 CFR§300.142(b)]

The parties to this Interagency Agreement are the Department of Services for Children, Youth and their Families (DSCYF); the Exceptional Children and Early Childhood Group, Delaware Department of Education (DDOE); Local Education Agencies (LEAs); and the Charter Schools. The DDOE ensures that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision and direction of the State Educational Agency (SEA), in accordance with the Federal Individuals with Disabilities Education Act (IDEA), Chapter 31 of Title 14 of the Delaware Code and the State Administrative Manual For Special Education Services (AMSES). The DSCYF is authorized to provide special education and related services, either directly or by contractual arrangement, for children with disabilities served in programs located in-state and out-of-state, in accordance with the regulations of the Department of Education.

### III. Purpose of the Agreement

The purpose of this Interagency Agreement is to ensure through a cooperative effort that (a) a free, appropriate, public education (FAPE) is provided to all children with disabilities who are served by the DSCYF in programs it directly provides, and in those programs provided through contractual arrangement, and (b) that all such programs are under the general supervision of the Department of Education. The responsibilities of each agency are documented in this Agreement.

### IV. Roles and Responsibilities of Each Agency, Including Access to Records and Transfer Procedures, Implementation, Dissemination and Training Activities, Funding Amounts, and Sources [34 CFR§300.142(a), (b), & (c)(2)]

#### Department of Services for Children, Youth and Their Families (DSCYF)

The DSCYF agrees to carry out the responsibilities listed below with regard to the operation of all educational programs for children with disabilities under its jurisdiction. Activities that discharge these responsibilities include, but

are not limited to the following. DSCYF will:

1. Develop and maintain policies and procedures by which applicable State and federal regulations relating to the education of children with disabilities are implemented for all programs under its jurisdiction that serve children with disabilities. Policies and procedures must delineate:
  - a. conditions under which records may be accessed, confidentiality, and transfer procedures;
  - b. the specific procedures to be followed by DSCYF, DOE, LEAs, and Charter Schools in the coordination of special education services for children with disabilities, served in programs located in-state and out-of-state;
  - c. the responsibilities of DSCYF for the collection, maintenance, and dissemination of data essential (a) to the orderly transition of students into and out of programs, and (b) to the conduct of DOE monitoring activities.
2. Discharge its responsibilities to children with disabilities served in programs located in-state and out-of-state, through activities which shall include, but are not limited to the following:
  - a. for students served in out-of-state programs, ensuring that (a) vendors meet the special education requirements of the state in which the programs are located, and (b) that teachers and other related services personnel are qualified to serve children with disabilities in that state;
  - b. for students served in-state within contracted programs where special education services are provided directly by DSCYF or their vendors, ensuring that (a) DSCYF and their vendors meet the special education regulations of DOE, and (b) special education services are provided by teachers and related services personnel qualified to serve children with disabilities in Delaware;
  - c. maintaining for all vendors, files which include a contract specifying that (a) each student with a disability has an Individualized Education Program (IEP) that meets requirements of the IDEA and implementing state law and regulation; (b) special education and related services are provided in compliance with the requirements of the IDEA and implementing state law and regulation; (c) the IEP is reviewed and revised, as needed, within 30 calendar days of initial attendance of the child, and at least annually thereafter; and (d) in the absence of special education records, the vendor will develop a temporary IEP for a previously

identified student, and schedule appropriate evaluation and/or IEP meetings, to be completed within 30 calendar days of initial attendance for in-state programs, and 60 calendar days of initial attendance for out-of-state programs;

- d. notifying the LEA or Charter School contact person when it becomes known that a student will be admitted to a vendor-operated in-State or out-of-State facility. Where special education services are provided by a vendor, DSCYF staff will request that the LEA or Charter School forward to DSCYF within ten business days, a copy of (a) the current IEP, (b) current Evaluation Report, and (c) the current psycho-educational evaluation. This documentation will be forwarded by DSCYF to the vendor at the time of admission;
  - e. notifying the LEA or Charter School at least ten business days in advance of a student's projected return from an out-of-state facility.
3. Facilitate the appointment of educational surrogate parents for children with disabilities, as may be required.
  4. Maintain representation on the Partners' Council for Children with Disabilities (PCCD).
  5. Participate in the provision of in-service, technical assistance and dissemination of relevant information to staff serving children with disabilities.
  6. Participate in and conduct training activities with appropriate staff concerning this Agreement and its implementation.
  7. Disseminate a memorandum from the Secretary, Department of Services for Children, Youth and Their Families (DSCYF), to appropriate staff regarding this Agreement, and specify its impact on agencies.
  8. Request state funding annually and no later than December 31st sufficient for the provision of a free appropriate public education to children with disabilities served by DSCYF.
  9. Follow protocols established by DOE to satisfy the required federal reporting requirements including the December 1 federal count for those children with disabilities served in programs located in-state and out-of-state, and who may qualify for federal funds in accordance with the IDEA.
  10. Develop and submit annually to DOE, proposals to supplement services to children with disabilities including, but not limited to the IDEA subgrant application.
  11. In cooperation with the DOE, develop and implement additional Interagency Agreements,

as needed, with LEAS, Charter Schools, and other public and private agencies to ensure a free, appropriate public education for children with disabilities under the jurisdiction of DSCYF.

### **Compliance Monitoring and Program Approval (DSCYF)**

#### **DSCYF shall:**

1. Ensure the participation of all special education programs serving children with disabilities that are operated directly or by contractual arrangement in the appropriate DOE monitoring activities, in order to assess and assure compliance with State and federal regulations relating to the education of children with disabilities.
  - a. In-state special education programs that are operated directly by DSCYF shall be included in the Continuous Improvement Compliance Monitoring System (CCMS) of the DOE.
  - b. In-state contracted programs providing educational services to children with disabilities must be included in the DOE review process for the Approval of Private Facilities.
  - c. For out-of state programs serving children with disabilities under contract with DSCYF, the agency shall maintain the following documentation:
    - i. vendor approval to provide special education from the state in which the facility is located, and
    - ii. vendor assurances that teachers and related service personnel are qualified to serve children with disabilities in the state in which the facility is located.

### **Department of Education (DOE)**

DOE agrees to carry out the responsibilities listed below in line with its general supervisory responsibility for educational programs for children with disabilities, including those under the jurisdiction of DSCYF as defined in this Agreement.

#### **DOE shall:**

1. Disseminate new or revised regulations and provide technical assistance and in-service training, as appropriate, to DSCYF on state and federal regulations pertaining to the education of children with disabilities.
2. Provide technical assistance relative to the development of the policies and procedures of DSCYF.

3. Review and approve the policies and procedures by which applicable state and federal regulations relating to the education of children with disabilities are implemented for all programs under DSCYF jurisdiction that serve children with disabilities.
4. Review vendor files maintained by DSCYF for out of state vendors to confirm policies and procedures are in place to ensure compliance with the IDEA. Copies of such reviews shall be forwarded to the DSCYF Supervisor of Educational Services and made available to LEAs and Charter Schools upon request. Reviews will be conducted:
  - a. within six months of signature of this agreement;
  - b. during the first year a new out-of-state vendor is approved;
  - c. every three years thereafter, or sooner if requested.
5. Conduct onsite reviews in conjunction with DSCYF as follows:
  - a. for in-state programs serving children with disabilities, the CCMS (four-year cycle) for state operated programs or the Approval of Private Facilities process (three-year cycle) for private vendors;
  - b. for out-of-State programs serving children with disabilities, co-visit with DSCYF staff, and LEA or Charter School representatives as appropriate, contracted sites, as conditions warrant, and according to staff and resources availability. Visits shall focus on the provision of FAPE by the vendor. The results of the visit shall be incorporated, where appropriate, in a report copied to the DSCYF Supervisor of Educational Services, the LEA or Charter School, and the vendor;
  - c. DOE shall include in the LEA's and Charter School CCMS monitoring procedures, methods to review a sample of files of DSCYF placed students.
6. Disseminate this Agreement, and provide training to the LEAs and Charter Schools and other appropriate staff on the implementation of this Agreement. DOE and DSCYF will develop a training plan and timelines toward implementation within six months of signature of the Agreement.
7. Provide technical assistance to DSCYF and review and approve proposals for federal funds based upon the annual count of students served, to supplement services for children with disabilities, and to provide technical assistance to

obtain such funds.

8. Provide technical assistance to DSCYF in the development of Interagency Agreements, as needed, with school districts, Charter Schools and other public and private agencies to ensure a free, appropriate, public education for all children with disabilities under the jurisdiction of DSCYF.
9. Coordinate with DSCYF in the development of such additional policies and procedures as may be needed to ensure the provision of a FAPE for children with disabilities served by DSCYF.

### **Local Education Agencies and Charter Schools**

Local Education Agencies (LEAs) and Charter Schools agree to carry out the activities listed below in line with their responsibility for educational services for children with disabilities identified as being the responsibility of that LEA or Charter School. Such students include those under the jurisdiction of DSCYF as defined in this Agreement. Activities that discharge LEA and Charter School responsibilities include but are not limited to, the following. LEAs and Charter Schools will:

1. Identify a LEA or Charter School contact person to interface with appropriate DSCYF staff in the provision of a free, appropriate, public education (FAPE) for those children with disabilities for whom DSCYF provides special education services in programs located either in-state or out-of-state.
2. Forward student records to DSCYF within ten business days of DSCYF notification that a LEA or Charter School student will be admitted to a vendor-operated in-state or out-of-state facility. Records shall include (a) the current IEP, (b) the current Evaluation Report, and (c) the current psycho-educational evaluation. LEA or Charter School contact information will accompany each record.
3. Review each student IEP within thirty days of receipt and advise the vendor of any issues related to the provision of a FAPE based upon the IEP. Such review shall constitute a desk audit of the status of the individual student with regard to the provision of FAPE. A copy of identified issues shall be sent to the DSCYF Supervisor of Educational Services.
4. Conduct in conjunction with DSCYF, onsite monitoring of their students in lieu of the desk audit described in the preceding paragraph. Such visits shall be arranged with DSCYF and the vendor. Copies of any reports resulting from the onsite monitoring shall be sent to the vendor, DOE, and the DSCYF Supervisor of Educational

Services.

5. Cooperate in the development of plans for student transition back into a LEA or Charter School when advance notice of the student's impending return is provided to them at least ten business days prior to the projected return date.
6. Develop procedures for implementing the LEA and Charter School responsibilities described in this Agreement.
7. Participate in in-service training and technical assistance provided by DSCYF and DOE relevant to the provision of FAPE to children with disabilities covered by this Agreement.

### **V. Procedures to Resolve Disputes Regarding Program and Fiscal Issues [34 CFR §300.142(A)(3)]**

1. All attempts should be made to resolve disputes at the program implementation level.

2. When disputes cannot be resolved at the lowest operational level, they shall be referred, in writing, to the State Director of the Exceptional Children and Early Childhood Education Group, DDOE; the Director of the Division of Management Support Services, DSCYF; and the Superintendent of the School District or CEO of the Charter School involved. These individuals will review the situation and determine how the dispute should be resolved. Their decision shall be shared, in writing, with the parties involved in the dispute within thirty (30) days of receipt of the request.

3. If the dispute cannot be resolved as described in V.2, the dispute shall be referred in writing to the Cabinet Secretary, DDOE; the Cabinet Secretary, DSCYF; and the President of the Chief School Officer's Association. Further, any party to this Interagency Agreement disagreeing with the decision reached in step V.2 may submit a written request for review within thirty (30) days of the decision to the Cabinet Secretary, DDOE; the Cabinet Secretary, DSCYF and the President of the Chief School Officer's Association, or other member of the Chief School Officer's Association, outlining their specific disagreement with the decision. The Cabinet Secretaries' and the President's decision shall be final and binding on all parties and shall be communicated, in writing, to all parties within thirty (30) days of referral of the matter to them or request for review.

4. This Interagency Agreement does not restrict or otherwise limit any additional rights or remedies any party may have under state or federal law, nor extend the rights or remedies of any party to the other. This Interagency Agreement does not restrict or otherwise limit the Delaware Department of Education's general supervisory authority to ensure that the requirements of state and federal law concerning the education of children with disabilities are carried out.

**VI. Agreement Review**

This Agreement shall be effective immediately upon the written signatures of all parties and shall remain in effect until a new Agreement is signed or is otherwise terminated in accordance with this section. This Agreement shall be reviewed annually by appropriate personnel from the Department of Education, the Department of Services for Children Youth and Their Families, and the Local Education Agencies and Charter Schools. Parties to this Agreement may request that all or part of it be renegotiated at any time for good cause, upon the written request of any of the participating agencies. This Agreement may be terminated by any party upon ninety (90) days written notice.

**SIGNATURE AND TITLE OF EACH AUTHORIZED  
AGENCY AND SCHOOL DISTRICT  
ADMINISTRATOR**

**Agency**

Mrs. Valerie A. Woodruff, Secretary of Education  
Department of Education

Ms. Cari DeSantis, Secretary  
Department of Services for Children, Youth and Their Families

Dr. Nancy J. Wilson, Associate State Secretary  
Curriculum & Instructional Improvement  
Department of Education

Dr. Martha Brooks, State Director  
Exceptional Children and Early Childhood Education  
Department of Education

**School Districts**

Mr. Tony J. Marchio, Superintendent  
Appoquinimink School District

Dr. Bruce Harter, Superintendent  
Brandywine School District

Dr. Harold Roberts, Superintendent  
Caesar Rodney School District

Dr. Dane A. Brandenberger, Superintendent  
Cape Henlopen School District

Dr. Michael D. Thomas, Superintendent  
Capital School District

Dr. Joseph Wise, Superintendent  
Christina School District

Dr. George Meney, Superintendent  
Colonial School District

Dr. George E. Stone, Superintendent  
Delmar School District

Mrs. Lois M. Hobbs, Superintendent  
Indian River School District

Dr. Daniel Curry, Superintendent  
Lake Forest School District

Mr. Keith Duda, Superintendent  
Laurel School District

Dr. Robert D. Smith, III, Superintendent  
Milford School District

Dr. Steve Godowski, Superintendent  
New Castle County Vo-Tech School District

Dr. Diane G. Sole, Superintendent  
Polytech School District

Dr. Robert Andrzejewski, Superintendent  
Red Clay Consolidated School District

Dr. Russell H. Knorr, Superintendent  
Seaford School District

Mrs. Deborah D. Wicks, Superintendent  
Smyrna School District

Dr. Patrick Savini, Superintendent  
Sussex Technical School District

Dr. Kevin E. Carson, Superintendent  
Woodbridge School District

**Charter Schools**

Mr. Leonard Litzi  
Academy of Dover Charter School

Mr. Allen Zipke  
Campus Community Charter School

Mr. Ron Russo  
Charter School of Wilmington

Mr. Charles Baldwin

Delaware Military Academy

Mr. Will Robinson  
East Side Charter School

Mr. Charles Hughes  
Thomas A. Edison Charter School

Ms. Catherine Sielski  
Kuumba Academy Charter School

Mr. John Taylor  
Marion T. Academy Charter School

Ms. Martha Clark  
MOT Charter School

Mr. Greg Meece  
Newark Charter School

Ms. Linda M. Fleetwood  
Positive Outcomes Charter School

Ms. Audrey Erschen  
Providence Creek Academy  
Charter School

Dr. Nancy Feichtl  
Sussex Academy of Arts and Sciences

---

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION**

**Delaware Coastal Management Program Policy Update**

The Delaware Department of Natural Resources and Environmental Control's (DNREC) Delaware Coastal Management Program (DCMP) has completed the first portion of the update of its enforceable policies, pursuant to 15 C.F.R. §923.84(b), incorporating changes occurring in State statutes and Executive Orders since the Programs last update in September 1998. As dictated by the National Oceanic and Atmospheric Administration (NOAA), the DCMP must routinely update its policies to maintain the authority to manage the coastal resources of Delaware and evaluate federal activities, permits and plans to the maximum extent to ensure practicable consistency by those pursuing these actions.

**5.A.3. Coastal Waters Management  
CMP Policies for Coastal Waters Management**

(24) No permit for the activities identified above shall be granted unless the activities are consistent with county and municipal zoning regulations.

[Authority - 7 Delaware Code 6003(c) (1)]

**5.A.4. Subaqueous Lands and Coastal Strip Management  
CMP Policies for Subaqueous Lands and Coastal Strip  
Management**

(17) Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or ~~navigable~~ nontidal waters.

[Authority - 7 Delaware Code 7201].

**5.B.2. Natural Areas Management  
CMP Policies for Natural Areas Management**

~~(16) The Office of State Planning Coordination shall consider areas registered pursuant to policy number three during the preparation or amendment of the statewide plan designating critical areas pursuant to Title 29, Chapter 92 of the Delaware Code. [Authority - Executive Order No. 43, August 15, 1996; 29 Delaware Code 9201 and 9202(4)]~~

**5.B.3. Flood Hazard Areas Management  
CMP Policies for Flood Hazard Areas Management**

(6) State agencies shall to the maximum extent possible minimize the threat posed by flood hazards for the following activities: (1) the construction of state buildings, structures, roads or other facilities; (2) the administration of grant or loan programs involving such construction by other governmental entities or private parties; (3) the transfer of lands or other properties; and (4) programs which affect or influence land development.

[Authority - Executive Order Number 29, September 6, 1977, Executive Order Number 48, February 27, 1978 and Executive Order Number 43, August 15, 1996; ~~29 Delaware Code 9225~~]

**5.C.1. Woodlands and Agricultural Lands Policies  
CMP Woodlands Policies**

(2) The General Assembly finds and declares that the pine and yellow-poplar forest resource of the State provides significant recreational, aesthetic, wildlife and environmental benefits as well as wood fiber essential to commerce and industry for the citizens of the State. The General Assembly has also determined that the pine and

hardwood forest resources are being harvested at a greater rate than they are being replanted or reproduced and unless measures are instituted to ensure that the forest resources are sustained, this natural resource will be depleted to the detriment of the citizens of the State. It is, therefore, the declared public policy of this State to preserve and protect the pine and yellow-poplar forest resources of the State.

[Authority – 7 3 Delaware Code 2965 1051]

(3) No person shall commence a cutting operation unless seed trees have been reserved pursuant to the natural regeneration method set forth herein or pursuant to an alternate management plan approved by the State Forester or his designee. This policy shall not apply to cutting operations of timber from land being cleared for reservoirs, military installations, agriculture, residential, ditch and utility right-of-ways, industrial sites, railroads or to cutting operations undertaken pursuant to a contract executed prior to January 1, 1989.

[Authority – 7 3 Delaware Code 2967 1053 (a and b)]

(4) No person shall cut or permit to be cut any pine or yellow-poplar tree or seedling required to be reserved for reseeded or planted under a reforestation plan or perform any act or permit any act to be performed which prevents reseeded or reforestation of any area in which a cutting operation has been conducted.

[Authority – 7 3 Delaware Code 2970 1056]

#### **CMP Policies for Silviculture**

(1) - The Forestry Administration shall provide for the protection of the waters of the State from pollution by sediment deposits resulting from silviculture activities as provided in ~~§2978 in Title 7~~ §1072 of Title 3. Through the adoption of subchapter VI, the State recognizes that water quality protection techniques for silviculture practices are an integral component of properly managed forests. Further, the State recognizes the positive benefits that properly managed forest systems have on the environment, water quality and quality of life in Delaware.

[Authority -7 3 Delaware Code 2977 1071]

(2) - Special orders can be issued if the Forestry Administrator, or Forestry Administrator's designee, finds that any owner or operator is conducting any silviculture activity in a manner which is causing or is likely to cause alteration of physical, chemical or biological properties of any state water, resulting from sediment deposition presenting an imminent and substantial danger to (a) the public health, safety, or welfare, or the health of animals, fish or aquatic life; (b) a public water supply; or (c) recreational, commercial, industrial, agricultural or other reasonable uses.

[Authority – 7 3 Delaware Code 2980 1073]

#### **5.D.11 CMP Policies for Waste Disposal CMP Policies for the Cleanup of Hazardous Substances**

(5) Hazardous substance means: a. Any hazardous waste as defined in Chapter 63 of Title 7; b. Any hazardous substance as defined in CERCLA; or c. Any substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

[Authority – 7 Delaware Code 9103 (9) (1)]

**DEPARTMENT OF ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION****BOARD OF NURSING****24 DE Admin. Code 1900****PUBLIC NOTICE**

The Delaware Board of Nursing in accordance with 24 Del.C. §1906(1) has proposed to promulgate Rules and Regulations related to Intravascular Therapy by Licensed Nurses.

These proposed rules and regulations which have been developed by the Board define intravascular therapy practices for licensed nurses. Peripheral and central line management, including special procedures such as chemotherapy and epidural catheter management are included.

A public hearing will be held on Wednesday, October 13, 2004 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed new section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be October 13, 2004.

The Delaware Board of Nursing proposes to add language regarding Intravascular Therapy to Section 7, Standards of Nursing Practice, within its Rules and Regulations.

---

**BOARD OF MASSAGE AND BODYWORK****24 DE Admin. Code 5300****PUBLIC NOTICE**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 5306(1), the Delaware Board of Massage and Bodywork proposes to revise its rules and regulations. The proposed revisions implement changes to the rules necessary to conform to the statutory changes resulting from House Bill 208 as amended by House Amendment No. 1 and Senate Amendment No.1. The revisions clarify the requirements of the change from a 100 hour course to a 300 hour course for certification as a massage technician; the requirements for temporary massage

technician certification; incorporate continuing education requirements for renewal of lapsed licenses; and outline the requirements for placing a license on inactive status. In addition, the Board is proposing to revise the rules on continuing education to require that all continuing education must be pre-approved by the Board.

A public hearing will be held on the proposed Rules and Regulations on Thursday, October 7, 2004 at 2:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904.

Any written comments should be submitted to the Board in care of Caitlin Mears, Administrative Specialist, Division of Professional Regulation, at the above address. The final date to submit written comments shall be at the scheduled public hearing.

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

---

**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, September 16, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding child care purchase of care policy, as it relates specifically to compensation, method of payment, and collection of fees.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware by October 1<sup>st</sup>, 2004.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results

of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

The proposed rule will allow providers to charge DSS fee paying clients the difference between the DSS determined parent fee and the provider's private fee. Providers will not be allowed to charge non-fee paying clients the difference.

The proposed changes will also allow self-arrange parents whose provider does not have a subsidy slot available to opt to pay only the difference between the DSS rate and the provider's private rate. Thus eliminating the 4 to 6 week wait for DSS client reimbursement.

The proposed changes will be incorporated into the Division of Social Services Child Care Contract (Section IV, Method of Payment, and Collection of Fees, Paragraph J) and the Division of Social Services Child Care Certificate Provider Agreement and Registration Form (Section II, Fees, Paragraph C).

Implementation of the proposed provisions on November 10<sup>th</sup>, 2004 is contingent upon promulgation of this rule.

---

## DEPARTMENT OF INSURANCE

### Notice Of Public Hearing

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Tuesday, October 5, 2004, at 10:00 AM in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 504 relating to Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers.

The purpose for amending Regulation 504 is to change certain course requirements relating to continuing education for licensed producers, to modernize and streamline course approval procedures, to change reciprocity guidelines to reflect changes in policy and law, and to make technical corrections and changes to the existing regulation. The foregoing purposes are general in nature and do not include all specific changes to the existing regulation. The proposed amendments are designed to incorporate the changes to continuing education standards for producers approved by the National Association of Insurance Commissioners. A copy of the proposed regulation is on the Delaware Department of Insurance website at <http://www.state.de.us/inscom/>

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures

Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday October 4, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

---

## DELAWARE RIVER BASIN COMMISSION

### PUBLIC NOTICE

The Delaware River Basin Commission will meet on Wednesday, September 1, 2004 at 9:30 a.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

---