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# Delaware Register of Regulations

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Issue Date: September 1, 2006

Volume 10 - Issue 3 Pages 380 - 590

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## IN THIS ISSUE:

### Regulations:

- Errata
- 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, 2006.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
October 1	September 15	4:30 p.m.
November 1	October 16	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.

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3600 Board of Registration of Geologists ..... 10 DE Reg. 68 (Prop.)

3900 Board of Clinical Social Work Examiners..... 10 DE Reg. 323 (Prop.)

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**DEPARTMENT OF EDUCATION****PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))  
14 **DE Admin. Code** 1526

**ERRATA****PUBLIC NOTICE****Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)****1526 Standard Certificate English to Speakers of Other Languages**

\* **Please Note:** Regulation 1526, previously published in the August *Register*, contained editing errors. The corrections to which are published herein.

**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** 1526 Standard Certificate English to Speakers of Other Languages. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute. The passage of PRAXIS™ II, a test of content knowledge, is now required, where applicable and available, in addition to academic preparation for the issuance of a Standard Certificate. Definitions were added, and course requirements were revised to reflect current practice in the Education of English Language Learners.

**C. Impact Criteria**

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

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

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

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

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

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

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other

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

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

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

### 1526 Standard Certificate English to Speakers of Other Languages (ESOL) Teachers

#### 1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** '1220(a), for English to Speakers of Other Languages Teachers (required for grades K to12).

#### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.0 Standard Certificate

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as an English to Speakers of Other Languages Teacher 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 Bachelor's degree from an regionally accredited college or university and,~~
- ~~3.2 Professional Education
 
  - ~~3.2.1 Completion of an approved teacher education program in English to Speakers of Other Languages Teacher (ESOL) or,~~
  - ~~3.2.2 A minimum of 24 semester hours to include Human Development, Methods of Teaching Elementary Language Arts, or English, or Foreign Languages; Identifying and Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching; and,~~~~
- ~~3.3 Specific Teaching Field
 
  - ~~3.3.1 Major in English to Speakers of Other Languages (ESOL) or,~~
  - ~~3.3.2 Completion of an approved teacher education program in English to Speaks of Other Languages (ESOL), or,~~
  - ~~3.3.3 Completion of an approved teacher education program in English, Foreign Language, or Elementary Education, with specific courses in: Second Language Acquisition or Psycholinguistics, 3 semesters hours, Methods of Teaching English as a Second Language, or English as a Second Dialect, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies or Multicultural Education, 3 semester hours, and~~
  - ~~3.3.4 Successful completion of the intermediate level of a foreign language. This requirement may be satisfied by a Department of Education approved proficiency test.~~~~

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

- ~~3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:
  - ~~3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or~~
  - ~~3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in English to Speakers of Other Languages; or~~
  - ~~3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~
  - ~~3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after September 11, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and~~
  - ~~3.1.5 Demonstrating oral and written proficiency in English and satisfactory completion of fifteen (15) graduate or undergraduate credits, as more specifically set forth in 3.1.5.1 through 3.1.5.5. With approval of a committee comprised of the candidate's principal or other designated school administrator, a higher education representative who teaches one of the approved courses, and a DOE representative, other verifiable professional experience may be substituted for no more than nine (9) of the required credits.
    - ~~3.1.5.1 Methods of Teaching English as a Second Language;~~
    - ~~3.1.5.2 Second Language Acquisition;~~
    - ~~3.1.5.3 Teaching Literacy for English Language Learners;~~
    - ~~3.1.5.4 Second language Testing;~~
    - ~~3.1.5.5 Structure of the English Language; and~~~~~~

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

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in English to Speakers of Other Languages;

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

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

#### **4.0 Effective Date**

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Teacher of English to Speakers of Other Languages after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.~~

#### **4.0 Multiple Certificates**

Educators may hold certificates in more than one area.

#### **5.0 Application Requirements**

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

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

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

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

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

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

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

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

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

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

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

**9.0 Secretary of Education Review**

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

**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)  
3 **DE Admin. Code** 501

**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change DHRC Rules 2 and 8. The Commission will hold a public hearing on the proposed rule changes on September 26, 2006. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The proposed rule changes are as follows:

**501 Harness Racing Rules and Regulations*****(Break in Continuity of Sections)*****2.0 Commission**

## 2.1 Purpose

2.1.1 The Delaware Harness Racing Commission, created by the Act, Title 4, Chapter 100, of the **Delaware Code**, is charged with implementing, administering and enforcing the Act. It is the intent of the Commission that the rules of the Commission be interpreted in the best interests of the public and the State of Delaware.

2.1.2 Through these Rules, the Commission intends to implement its statutory mandate to promulgate and prescribe such rules and regulations as are necessary and proper for the purpose of regulating and overseeing the sport of harness racing, as defined in the Act, within the State of Delaware in the public interest, including the regulation of the conduct of all grooms, drivers and owners and their employees, and the regulation of all harness racing horses entered or to be entered in any harness racing meet authorized by the Commission pursuant to the Act.

## 2.2 General Authority

2.2.1 The Commission shall regulate each race meeting and the persons who participate in each

race meeting.

2.2.2 Pursuant to the authority granted in the Act the Commission may delegate to the ~~State Steward and the judges~~ Board of Judges all powers and duties necessary to fully implement the purposes of the Act.

### 2.3 Membership And Meetings

2.3.1 The Commission consists of 5 members appointed as prescribed by the Act. No member of the Commission shall be licensed or regulated, directly or indirectly, by the Commission, nor shall any member of the Commission have any legal or beneficial interest, direct or indirect, pecuniary or otherwise, in any firm, association or corporation so licensed or regulated or which participates in pari-mutuel meetings in any manner. No member of the Commission shall be a person not of good moral character, nor shall a member of the Commission be a person convicted of, or under indictment for, a felony under the laws of Delaware or any other state, or the United States.

2.3.2 The Chairman of the Commission shall be elected by majority vote of the members of the Commission.

2.3.3 The Commission shall meet at the call of the Chairman or of a majority of the members. The Commission shall establish and maintain offices on each ~~a~~ Association grounds, and at such other places as the Commission deems appropriate, and shall meet at least monthly during the period when any ~~a~~ Association is conducting a harness horse racing meet, and at such other times as deemed necessary. Notice of the meetings must be given and the meetings must be conducted in accordance with the Freedom of Information Act, 29 **Del.C.** Ch. 100.

2.3.4 A majority of the Commission constitutes a quorum. When a quorum is present, a motion before the Commission is carried by an affirmative vote of the majority of the Commissioners present at the meeting.

2.3.5 To the extent required by 29 **Del.C.** Ch. 101 or by the Act, the Commission rules and orders shall be subject to the Administrative Procedures Act.

2.3.6 A Commission member may not act in the name of the Commission on any matter without a majority vote of a quorum of the Commission.

### 2.4 Annual Report

2.4.1 The Commission shall submit an annual report as prescribed by the Act.

### 2.5 Employees/Officials

2.5.1 The Commission may appoint ~~a State Steward and such other~~ officers, clerks, stenographers, inspectors and officials or employees as it deems necessary to implement, administer and enforce the Act. No person shall be appointed to or hold any such office or position who holds any official relation to any ~~a~~ Association ~~or corporation engaged in~~ or conducting harness horse racing within the State of Delaware, or whose parent, child or sibling is so engaged during the meeting at which such person is so appointed. Regardless of who pays the salary of such officials or employees, the Commission shall determine and insure that such officials or employees perform their duties in the public interest.

2.5.2 ~~The Director of the Division of Poultry and Animal Health~~ Administrator of Harness Racing (Administrator) within the Department of Agriculture shall maintain the records of the Commission and shall perform other duties as required by the Commission. Except as otherwise provided by a rule of the Commission, if a rule of the Commission places a duty on the ~~Director of Poultry and Animal Health, the Director~~ Administrator, the Director Administrator may delegate that duty to another employee of the Department of Agriculture or of the Commission. ~~The Commission may not employ or continue to employ, and the Director of Poultry and Animal Health may not delegate a Commission duty to, any person who:~~

2.5.2.1 ~~Owns a financial interest in an association in the State of Delaware;~~

2.5.2.2 ~~Accepts remuneration from an association in the State of Delaware;~~

2.5.2.3 ~~Is an owner, lessor or lessee of a horse that is entered in a race in the State of Delaware; or~~

2.5.2.4 ~~Accepts or is entitled to a part of the purse or purse supplement to be paid on a horse in a race held in the State of Delaware.~~

2.5.3 No Commissioner, racing official, ~~State Steward~~, judge or employee of the Commission whose duty it is to insure that the rules and regulations of the Commission are complied with shall wager in any pari-mutuel pool at any facility or through any pari-mutuel system subject to the jurisdiction of this Commission, or otherwise bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission.

### 2.6 Power of Entry

2.6.1 A member or employee of the Commission, ~~the State Steward~~ or a judge, a peace officer or a designee of such a person may enter any area on ~~a~~ Association grounds regulated by the Commission, or any other

place of business of an aAssociation regulated by the Commission, at any time to enforce or administer the Act or Commission rules, including the requirements set forth in Rule 4 of these Rules pertaining to Associations.

2.6.2 An aAssociation or an officer, employee or agent of an aAssociation may not hinder a person who is conducting an investigation under or attempting to enforce or administer the Act or Commission rules.

2.7 Subpoenas

2.7.1 A member of the Commission, the ~~Director of Poultry and Animal Health Administrator~~, the ~~State Steward~~ or judges, the Commission Investigator, the presiding officer of a Commission proceeding or other person authorized to perform duties under the Act may require by subpoena the attendance of witnesses and the reproduction of books, papers and documents. Subpoenas as authorized by such persons shall be issued in blank under the hand of any Commissioner and over the seal of the Commission to any party.

2.7.2 A member of the Commission, the ~~Director of Poultry and Animal Health Administrator~~, a presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.

2.7.3 If any person refuses to obey any subpoena requiring the person to appear, to testify, or to produce any books, papers and documents, the Commission may apply to the Superior Court of the county in which the Commission is sitting, and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify, or to produce the books, papers and documents.

2.8 Records

2.8.1 Except as otherwise provided by the Act, Commission records are subject to the Freedom of Information Act, Title 29, **Del.C.**, Ch. 100.

2.8.2 Except as otherwise authorized by statute, all original records of the Commission shall be maintained in the main offices of the Commission at the Department of Agriculture in Dover, Delaware. No person may remove an original record from the offices of the Commission without the approval of the ~~Director of Poultry and Animal Health Administrator~~.

2.8.3 To inspect Commission records, a person must make a written request to the Commission in conformity with 29 **Del.C.** Ch. 100, and must pay all costs including preparing or copying the record and postage, if applicable. The Commission shall determine the costs involved in preparing or copying the record as provided by the Freedom of Information Act.

2.9 Allocation of Race Dates and Permits

2.9.1 The Commission shall allocate race dates and permits to each aAssociation in accordance with the Act. An aAssociation shall apply to the Commission ~~not later than August 15 of each year~~ for race dates to be conducted in the next calendar year. The application must contain the information required by the Act and Commission licensing procedure. After the request is filed, the Commission may require the association to submit additional information.

2.10 Commission's Powers

The Commission shall promulgate administrative regulations for effectively preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health of horses in races in which they are to participate. The Commission is also authorized to promulgate administrative regulations for the legal drug testing of licensees. The Commission is authorized to contract for the maintenance and operation of a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests for enforcement of the Commission's drug testing rules and regulations. The licensed persons or aAssociations conducting harness racing shall reimburse the Commission for all costs of the drug testing programs established pursuant to this section. Increases in costs of the aforementioned testing program shall be reasonable and related to expansion in the number of days of racing and the number of races held, the need to maintain competitive salaries, and inflation. The Commission may not unreasonably expand the drug testing program beyond the scope of the program in effect as of June 30, 1998. Any decision by the Commission to expand the scope of the drug testing program that occurs after an administrative hearing, at which the persons or aAssociations licensed under 3 **Del.C.** §10022 consent to such expansion, shall not be deemed an unreasonable expansion for purposes of this section. The Commission, in addition to the penalties contained in 3 **Del.C.** §10026, may impose penalties on licensees who violate the drug testing regulations including imposition of fines or assessments for drug testing costs.

*(Break in Continuity of Sections)*

## 8.0 Veterinary Practices, Equine Health Medication

### 8.1 General Provisions

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

### 8.2 Veterinary Practices

#### 8.2.1 Veterinarians Under Authority of Commission Veterinarian

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the Commission Veterinarian and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the Commission Veterinarian may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

#### 8.2.2 Treatment Restrictions

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the State Steward, judges and/or the Commission.

### 8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

#### 8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

##### 8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and

their pharmacological potential for altering the performance of a race is very high.

8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

- 8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;
- 8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- 8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- 8.3.1.2.4 Drugs with prominent CNS depressant action;
- 8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- 8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;
- 8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- 8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

- 8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- 8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- 8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- 8.3.1.3.4 Primary vasodilating/hypotensive agents; and
- 8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- 8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;
- 8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects
  - 8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants
  - 8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics
  - 8.3.1.4.2.3 Drugs used to void the urinary bladder
  - 8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.
- 8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);
- 8.3.1.4.4 Mineralocorticoid drugs;
- 8.3.1.4.5 Skeletal muscle relaxants;
- 8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

- drugs;
- 8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like
  - 8.3.1.4.6.2 Corticosteroids (glucocorticoids); and
  - 8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.
  - 8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;
  - 8.3.1.4.8 Less potent diuretics;
  - 8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:
    - 8.3.1.4.9.1 Cardiac glycosides;
    - 8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propanolol); and
    - 8.3.1.4.9.3 Miscellaneous cardiotoxic drugs.
  - 8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;
  - 8.3.1.4.11 Antidiarrheal agents; and
  - 8.3.1.4.12 Miscellaneous drugs including:
    - 8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;
    - 8.3.1.4.12.2 Stomachics; and
    - 8.3.1.4.12.3 Mucolytic agents.

### 8.3.1.5 Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

### 8.3.2 Penalty Recommendations

The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1 - in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of \$5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.2 Class 2 - in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3 - in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of \$3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4 - in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of \$2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

8.3.2.5 Class 5 - Zero to 15 days suspension with a possible loss of purse and/or fine and assessment for the cost of the drug testing.

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Aggravating or mitigating circumstances in any case should be considered and greater or lesser penalties and/or disciplinary measures may be imposed than those set forth above. Specifically, if the State Steward or other designee of the Commission determine that mitigating circumstances warrant imposition of a lesser penalty than the recommendations suggest, he may impose a lesser penalty. If the State Steward or other designee of the Commission determines that aggravating circumstances require imposition of a greater penalty, however, he may only impose up to the maximum recommended penalty, and must refer the case to the Commission for its review, with a recommendation for specific action. Without limitation, the presence of the following aggravating circumstances may warrant imposition of greater penalties than those recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these medication and prohibited substances rules by the same trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar rules in other racing jurisdictions by the same trainer or with respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;

8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

### 8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with

testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

8.3.3.5 A finding by the official chemist that Erythropoietin (EPO) darbopoinetin (DPO) or their antibodies was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO, DPO or their antibodies. The judges shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO, DPO or their antibodies from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

~~Notwithstanding any inconsistent provision of this Rule, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that EPO, DPO or their antibodies was present in the sample taken from that horse.~~

#### 8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

- 8.3.4.2.1 the name of the product;
- 8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;
- 8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;
- 8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and
- 8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

#### 8.3.5 Furosemide (Salix) and Aminocaproic Acid (Amicar)

##### 8.3.5.1 General

Furosemide (Salix) and Aminocaproic Acid (Amicar)

may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Furosemide or Furosemide with Aminocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a pot-race urine sample.

##### 8.3.5.2 Method of Administration

Furosemide or Furosemide with Aminocaproic Acid shall be administered intravenously by the licensed Bleeder Medication Veterinarian, unless he/she determines that a horse cannot receive an intravenous administration of Furosemide or Furosemide with Aminocaproic Acid. Permission for an intramuscular administration must be authorized by the Presiding Judge or his/her representative; provided, however, that once Furosemide or Furosemide with Aminocaproic Acid is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

##### 8.3.5.3 Dosage

Aminocaproic Acid shall be administered to a horse on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 7.5 grams or less than 2.5 grams

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intravenously. Furosemide shall be administered to horses on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 Not more than 750 milligrams may be administered if (1) the Commission veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.2 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

8.3.5.4 Timing of Administration

Horses must be presented at their assigned stalls in the paddock for Aminocaproic Acid treatment. Aminocaproic Acid will be administered not more than 90 minutes (1 1/2 hours) and not less than 60 minutes (1 hour) prior to post time of their respective races and must be treated prior to going on the track the first time. Failure to meet this time frame will result in scratching the horse and the trainer may be fined. Horses must be presented at the Furosemide stall in the paddock, and the Furosemide administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed Bleeder Medication veterinarian at the rate approved by the Commission. No credit shall be given without approval of the Bleeder Medication Veterinarian.

8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide in oral form.

8.3.5.7 Post-Race Quantification

The presence of Aminocaproic Acid in a horse following the running of the race in which it was not declared or reported, may result in the disqualification of the horse or other sanctions being imposed upon the trainer and the administering veterinarian.

Conversely, the absence of a bleeder medication following the running of a race, which was declared and reported may result in the disqualification of the horse and other sanctions being imposed upon the trainer and the bleeder Medication Veterinarian

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Furosemide:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.1.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.2 or exceeded 500 milligrams as provided in 8.3.5.3.1, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

8.3.5.8 Reports

8.3.5.8.1 The Bleeder Medication Veterinarian who administers Aminocaproic Acid or Furosemide or Furosemide with Aminocaproic Acid to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the Judges within one (1) hour of the last scheduled race for that day.

## 8.3.5.9 Bleeder List

8.3.5.9.1 The Bleeder Medication Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and furosemide or Furosemide with Aminocaproic Acid, if applicable must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies. A horse may discontinue the use of Aminocaproic Acid without a ten (10) day rest period or having to reliquary provided the horse was on Aminocaproic Acid for thirty (34) days or more. In addition, once a horse discontinues the use of Aminocaproic Acid, it is prohibited from using said medication for ninety (90) days from the date of its last administration for Aminocaproic Acid.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Furosemide and Aminocaproic Acid symbols in the program shall appropriately reflect that the horse did not receive Furosemide or Furosemide with Aminocaproic Acid its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 8.3.5.9.1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.5.9.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the Commission Veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses in such dosage amount that the official test sample shall contain not more than 2.5 micrograms per milliliter of blood plasma.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood sample receptacles will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in sample receptacles approved by the Commission, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

## 8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other foreign substance that may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the Commission Veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the Commission Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

## 8.6 Physical Inspection of Horses

### 8.6.1 Veterinarian's List

8.6.1.1 The Commission Veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the Commission Veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

### 8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires

while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

8.7.1.1 The possession and/or use of a drug, substance, or medication, specified below for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the driver; or the use of which may adversely affect the integrity of racing.

8.7.1.2 The possession and/or use of a drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States

8.8 Prohibited Substances Protests; Testing

8.8.1 Protest-Request for Super Test

8.8.1.1 If a licensed owner, trainer, driver, or claimant has a reasonable belief that a competing or claimed horse has, or may have an unfair competitive advantage due to a violation of the Commission Rules, that owner, trainer, driver, or claimant may file a "Prohibited Substances Protest" with the Commission.

8.8.1.2 A "Prohibited Substances Protest" empowers the owner, trainer, driver, or claimant to request that any horse or horses he or she competes against or claims in a specified race have a blood and urine sample collected and then tested at an official Association of Racing Commissioners International (ARCI) approved laboratory of his or her choice. The designated laboratory shall employ state-of-the-art testing methods when testing these protested samples, which shall include, but not be limited to, Enzyme-Linked Immunosorbent Assay (ELISA), Thin Layer Chromatography (TLC), Gas Chromatography Mass Spectrometry (GCM-S), Liquid Chromatography Mass Spectrometry (LCMSMS), and Total Carbon Dioxide (TCO<sub>2</sub>) tests.

8.8.1.3 The owner, trainer, driver, or claimant must file a verbal protest with either the starter or paddock judge before the race has been made official. The starter or paddock judge must notify the Presiding Judge immediately, who shall order a veterinary assistant to escort and remain with the horse in accordance with established policy for obtaining a blood and urine sample. Within fifteen (15) minutes after the official sign has been posted for the race in which the protested horse competed, the protesting party shall file a written protest with the paddock judge and post a deposit of \$1,000 which shall be used to offset the following costs:

8.8.1.3.1 The collection of sufficient blood and urine samples, including the costs of the State veterinary assistant and State veterinarian and all necessary collection apparatus;

8.8.1.3.2 The packing of and transportation of these samples by bonded courier to the selected laboratory; and

8.8.1.3.3 All costs incurred by the state-of-the-art testing methods employed by the ARCI laboratory.

8.8.1.4 In the event the costs exceed the \$1,000 deposit, the protesting party shall be required to post additional monies to cover such costs.

8.8.1.5 The owner and/or trainer of the protested horse shall have the right to be present during the collection, packaging and shipping of these test samples.

8.8.1.6 Upon completion of all testing, the laboratory shall notify the Commission of the results. The Commission shall immediately notify the trainer of the protested horse as well as the protesting party of these test results.

8.8.1.7 If the test results substantiate a violation of the Commission rules in effect on the date of the race, the trainer of the tested horse shall be afforded the same rights every trainer receives when charged with

any rules violation. This shall include the right to request a split sample test at a designated ARCI laboratory that has agreed to accept split samples from the Commission.

8.8.1.8 Penalties shall be assessed in accordance with the Commission penalty recommendations for a violation of the rules in effect on the date of the race. In no case, however, shall the penalty imposed for a medication violation be less than a \$500 fine. If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to any DHRC penalties, the horse shall immediately be placed on the Steward's List and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected. All testing must be performed by the DHRC official lab.

8.8.1.9 If the test results substantiate a violation of the Commission rules in effect on the date of the race, a successful claimant may void the claim in accordance with Commission Rules.

8.8.1.10 Any monies remaining from the protest deposit after costs shall be returned to the protesting party even if a violation of the Commission Rules is not detected. If a violation is detected, costs shall be assessed against the trainer of the protested horse and the Commission shall reimburse the protesting party upon receipt thereof.

8.8.1.11 The owner, trainer, driver, or claimant who files a Prohibited Substances Protest pursuant to this Section shall be immune from civil liability for filing the protest.

## 8.8.2 Routine Post Race Testing

8.8.2.1 Routine Post Race Testing shall include but not be limited to screening for antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.2 Any claimed horse not otherwise selected for testing by the racing officials shall be tested if requested by the claimant at the time the claim form is submitted in accordance with the Commission Rules.

8.8.2.3 The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, illegal level of a permitted medication, or presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues.

8.8.2.4 If the test results substantiate the presence of antibodies to erythropoietin (EPO), darbepoietin, or any EPO analogues, in addition to assessing penalties in accordance with the DHRC rules, the horse shall immediately be placed on the steward's list and shall not be permitted to enter a race until the horse tests negative for the presence of EPO, darbepoietin, or any EPO analogue antibody(ies) previously detected and said horse is removed from the Steward's List. All testing must be performed by the DHRC official lab.

8.8.3 This Rule enacts the provisions of 74 **Del. Laws** c. 236 (2004) which amended 28 **Del.C.** §706 in its entirety, and this Rule shall apply in the event these provisions conflict with or are otherwise inconsistent with any other Commission Rule.

## 8.9 Prerace Testing by Blood Gas Analyzer or Similar Equipment

8.9.1 Notwithstanding any other provisions of these Rules to the contrary, the Commission may conduct prerace and postrace testing with the use of any accepted, reliable testing instrument, including but not limited to a blood gas analyzer for measuring excess carbon dioxide in blood samples.

8.9.2 The Presiding Judge shall announce the selected races or horses for testing and the appropriate time and location.

8.9.3 All horses shall be brought to the paddock or other secure, designated area for the prerace testing before its first warm up, based on the Commission published paddock times.

8.9.4 Each horse entered to compete in the racing program shall be present in his or her designated paddock stall with a groom for the purpose of having a blood sample drawn by the Commission Veterinarian.

8.9.5 The order and number of horses which shall have blood drawn for prerace testing shall be at the discretion of the Commission and the presiding judge.

8.9.6 The Commission Veterinarian will be responsible to verify with the testing machine technician that the blood gas analyzer test is completed for the specific horse in question. The Commission Veterinarian or his designee will inform the trainer or groom if their horse will be retested or can be given permission to leave the paddock.

8.9.7 *Refusal-Failure* or refusal by a licensee to present a selected horse under his care, custody, or control for blood gas analyzer testing, or who refuses in any other way, shall result in an automatic scratch of the horse from the racing program, and any other appropriate disciplinary action in the discretion of the judges. The Commission Veterinarian shall document the name of the trainer or person who refuses to have blood drawn from the horse, and shall file a report with the Commission.

8.9.8 *Exercise Prior to Testing*-In the event that the horse has exercised prior to testing and the

horse tests below the Commission standard for a high blood gas test, the horse can be retested upon the discretion of the Commission Veterinarian or presiding judge, or tested post race.

8.9.9 *Post Race Testing*-The blood gas analyzer machine or similar testing equipment may be used for the post-race blood gas testing on selected horses. The collection of samples will be pursuant to Rule 8.4.3 and testing of split samples will be pursuant to Rule 8.4.3.5.10.

8.9.10 The Commission Veterinarian will provide documentation reflecting the tattoo or name of the horse from which the blood was drawn, the date and time the blood was drawn, and any other identifying information.

8.9.11 *Trainer Observation of Testing*-The trainer or other designated representative is permitted to observe the testing procedure, but not to question the technician or otherwise disrupt the testing.

8.9.12 The Presiding Judge, Commission Veterinarian, and blood gas technician will ensure that the blood gas analyzer or other testing equipment is calibrated in compliance with the recommended calibration and maintenance procedures for the machine, and that the testing machine is in proper working order.

8.9.13 In addition to the provisions of Rule 8.3 and unless otherwise permitted by these Rules, no foreign substance shall be carried in the body of a horse when the horse is on the grounds of the licensed racetrack; it shall be a violation of this rule for a horse to test positive in a pre-race test result using a blood gas analyzer or other testing equipment.

8.9.14 The penalties for post-race positive tests contained in Rule 8.3.2, may apply to pre-race test samples that are positive for a prohibited substance.

8.9.14.1 A positive test result from a pre-race sample tested on the blood gas analyzer machine is subject to the recommended penalty in Rules 8.3.2 and 8.3.3.3. For pre-race testing the Commission may use a testing machine that uses the Commission standard in Rule 8.3.3.3--substances present in a horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules.

8.9.14.2 The Commission may alternatively use a testing machine that measures carbon dioxide levels in pre-race samples using a Base Excess testing protocol.

8.9.14.2.1 Under this alternative protocol, the prohibitive Base Excess concentrations are as follows: Base Excess level of 10.0 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horses and Base Excess (BE) level of 12.0 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse. The level of uncertainty will be included before it is considered a violation of these Rules. The level of uncertainty is 0.4 mmol/l (mEq/l) and a positive test report must include this level of uncertainty. A horse must show a Base Excess (BE) level of 10.4 mmol/l (mEq/l) or higher for non-furosemide (Lasix) treated horse and Base Excess (BE) level of 12.4 mmol/l (mEq/l) or higher for furosemide (Lasix) treated horse, in order for a violation to be reported under this Rule.

8.9.14.2.2 A commission representative will notify the trainer or licensed designee and the primary blood sample of the horse in question shall be immediately retested. In the event that a second blood gas analyzer test is necessary, the Commission Veterinarian or his designee will take a rectal temperature of said horse. The horse's temperature will be recorded on the veterinarian's control sheet. A second blood sample shall be extracted from the horse by the Commission Veterinarian.

8.9.14.2.3 ~~With respect to a finding of a prohibited level of carbon dioxide in a blood sample the second extraction obtained from a prerace blood gas analyzer test result, there shall be no right to testing of the "secondary sample extraction" by the licensee, provided that a "secondary sample" shall be transported to the designated Commission laboratory on an anonymous basis for confirmatory testing. In the event that the initial blood gas analyzer test result is confirmed by the test results of the official Commission laboratory, second extraction in the designated Commission testing area at the racetrack, such test results shall be prima facie evidence that the prohibited drug a prohibitive base excess concentration was present in the horse at the time it was scheduled to participate in a race, and is prima facie evidence.~~

8.10 Quarantine Procedure For Carbon Dioxide Positive Tests (Prerace Or Postrace)

8.10.1 Detention/Quarantine of Horses: The owner or trainer must request use of the quarantine procedure by sending written notice to the presiding judge within forty-eight (48) hours of notification of the positive carbon dioxide test report. The owner or trainer will then be permitted, totally at his/her own expense, to make the necessary scheduling arrangements with the Judges and the Commission Veterinarian. The horse in question will be quarantined on the grounds for periodic blood gas testing by the DHRC (up to three days) at the trainer's expense. All caretaker activities for the horse in question will be the responsibility of the horse's trainer.

8.10.2 Procedure: The owner or trainer will be responsible for providing the DHRC with a minimum

check for \$1,500.00 to cover the costs for the quarantine. A professionally trained Track Security Officer must be with the horse at all times, and the Security Officer must be knowledgeable about the importance of monitoring all activity pertaining to the quarantined horse.

8.10.3 The quarantine of a horse is subject to the following mandatory requirements:

8.10.3.1 The owner or trainer will be required to deposit sufficient funds with the DHRC Presiding Judge to cover the costs of the quarantine of the horse. The minimum quarantine cost will be \$1,500, and this figure may be higher if additional special circumstances are required for a particular horse. None of these procedures will be initiated until the Commission has in its possession a certified check or other method of payment acceptable to the Commission. The owner or trainer is responsible for all costs for the quarantine, including but not limited to, the costs of: stall bedding, daily cleaning of the stall, feed and hay, stall rent, hourly guard salary, portable toilet rental, veterinary charge, courier or shipping charges to the laboratory, laboratory analysis costs. Unused funds will be returned to the trainer.

8.10.3.2 The expected period of the quarantine will be seventy-two hours.

8.10.3.3 The owner or trainer is required to execute a reasonable liability waiver form if requested to do so by the track for the quarantine of the horse on track grounds.

8.10.3.4 The owner or trainer is obligated to reimburse the track if the racing association is required to purchase additional insurance to cover risks from the quarantine of the trainer's horse. The owner or trainer is also responsible for any additional costs required by the track to pad or otherwise specially equip the quarantine stall.

8.10.3.5 All activity of the quarantined horse is observed, documented, and recorded by security officers for the track and the DHRC.

8.10.3.6 The Commission will be responsible for arranging for and providing for bedding, feed, water, and daily cleaning of the stall, all of which are at the owner's expense. Feed for the horse will be purchased by DHRC officials as specified by the owner or trainer. Samples of the feed will be retained by the DHRC designated official.

8.10.3.7 Each bale of hay/straw will be intact and uncut for inspection of contraband. Four small samples of hay are to be taken from the bale of hay used to feed the animal (one from each end of the bale of hay and two from the middle of the bale of hay). These samples with the ingredient tags from the bag of feed used by the horse will be retained by the DHRC designated official.

8.10.3.8 Every trainer, groom, or caretaker is subject to continuous observation and may be searched when with the horse for contraband.

8.10.3.9 Horses may be trained, but if leg paints or salves are used, they must be new and in unopened containers, and the track Security Officer must monitor the preparation of the horse.

8.10.3.10 A Security Officer must observe the horse during training and ensure that it does not leave the track except to return to the quarantine stall.

8.10.3.11 A sick horse must only be determined ill by the Commission Veterinarian and the quarantine of the horse will be terminated. Any bills incurred for the quarantine of the horse prior to the illness and termination of the detention will be prorated.

8.10.3.12 Stalls for the quarantine of horses are designated by the Presiding Judge of the DHRC, in cooperation with the racetrack.

8.10.3.13 Trainers can restrict water based on previous pre-race preparation schedules.

8.10.3.14 Trainers are expected to train their horse in the same manner as the horse was trained on previous racing events. The horse will be equipped with all the items that it would normally carry, taken to the paddock, and handled in a manner similar to previous racing events.

8.10.3.15 Blood samples will be taken from the quarantined horse by the Commission Veterinarian, as he or she deems appropriate and necessary during the quarantine period. A blood sample should be taken when the horse first enters the quarantine stall and again at the pre-arranged time between sixty (60) and seventy-two (72) hours. At the discretion of the Commission, another sample may be taken between the initial sample and the sample taken at the cessation of the quarantine period. Blood samples will only be taken from the horse that is at rest for a period of time approved by the Commission Veterinarian. The owner or trainer or his/her representative must be present and witness the collection of the blood samples. Blood samples will be shipped promptly to the Commission's designated testing laboratory, pursuant to the Commission's standard chain-of-custody procedures.

8.10.3.16 At the conclusion of the quarantine period, the party requesting the quarantine will be provided timely notice of the test results from the DHRC. The trainer may present such evidence at a hearing

before the Judges if he or she attempts to prove that the horse has a naturally high carbon dioxide level.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at: <http://www.state.de.us/deptagri/harness/index.shtml>**

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## NUTRIENT MANAGEMENT COMMISSION

Statutory Authority: 3 Delaware Code, Section 2221 (3 **Del.C.** §2221

### PUBLIC NOTICE

#### Nutrient Management Commission

Pursuant to 29 **Del.C.** §10115, I hereby recommend the proposed modifications to the nutrient handling certification regulations and mandate regulations to be posted in the *Register of Regulations* during the month of September, 2006.

#### Synopsis:

**Nutrient Management Certification Regulation Amendments (Exhibit A):** Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulation addresses application timing and placement for commercial inorganic fertilizer and organic fertilizer

**Mandate Amendment (Exhibit B):** The proposed regulation requires nutrient handlers and animal operations to develop and implement nutrient management practices as required by the Nutrient Management Law (3 **Del.C.** §2201 et. al.) by January 1, 2007.

Comments on the proposed changes will be accepted from September 1, 2006 until September 30, 2006. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: William Rohrer. Hearings for the proposed regulations will be conducted at the Delaware Department of Agriculture on September 26, 2006 at 6:00 PM and at the Gumboro Fire Company hall on September 28, 2006 at 6:00 PM. A meeting to accept the proposed changes was held at the Nutrient Management Full Commission meeting on August 8, 2006 at 7:00 PM. The accepted changes are indicated below.

**Amendments:** Paragraphs 6.0 – 14.0, reference 1200 Nutrient Management, 1201 Nutrient Management Certification Regulations.; Paragraph 4.0, reference Nutrient Management, 1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations.

### 1201 Nutrient Management Certification Regulations

#### PREAMBLE

These regulations have been developed pursuant to 3 **Del.C.** Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the certification of persons who conduct certain activities that involve the generation or application of nutrients to lands or water, or who are involved in providing advice or consultation regarding such application of nutrients. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

#### 1.0 Authority

1.1 These regulations are promulgated pursuant to the authority provided by 3 **Del.C.**, Ch. 22, §2221.

**2.0 Purpose**

2.1 The purpose of these regulations is to establish certification requirements for certain generators or handlers of nutrients, or who engage in advising or consulting with others regarding the formulation, application, or scheduling of nutrients within the State of Delaware.

**3.0 Definitions**

3.1 For purposes of these regulations, the following words or terms shall have the meanings as indicated:

**"Animal Feeding Operation"** or **"AFO"** means any area or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period.

**"Animal Unit"** shall be as defined by the United States Department of Agriculture Natural Resources Conservation Service, and is approximately 1,000 lbs. "average" live body weight.

**"Applicant"** means any person seeking a certificate from the Commission.

**"Apply, Applying"**, or any derivation of the word "apply", as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic and/or inorganic nutrients.

**"Certification"** means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in these regulations.

**"Commercial Nutrient Handler"** means a person who applies organic or inorganic nutrients to lands or waters in the State as a component of a commercial or agricultural business in exchange for a fee or service charge.

**"Commercial Inorganic Fertilizer"** means any synthetic chemical compound or formulations (other than liming materials) that is added to a soil to supply one or more plant nutrients essential to the growth of plants.

**"Commercial Processor"** means any individual, partnership, corporation, association or other business unit that controls, through contracts, vertical integration or other means, several stages of production and marketing of any agricultural commodity.

**"Commission"** or **"DNMC"** means the Delaware Nutrient Management Commission.

**"Credit"** represents a unit of measuring education for certification as defined by the Commission and is dependent upon such factors as curricula intensity and class time.

**"Direct Supervision"** refers to actions by a person who is certified with the State Nutrient Management Program and directs individuals within the same organization/company in applying nutrients. Direct supervisors hold responsibility for nutrient application actions for those under his/her supervision.

**"Nutrient Consultant"** means a person who is engaged in the activities of advising or consulting with another person who is required to have a certificate under these regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within the State. Provided, however, any employee of any federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his/her capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a nutrient management plan developed pursuant to these regulations.

**"Nutrient Generator"** means a person who owns or operates a facility within the State that produces organic or inorganic nutrients.

**"Nutrient Management Plan"** or "plan" means a plan by a certified nutrient consultant to manage the amount, placement, timing, and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turfgrass.

**"Nutrients"** means nitrogen, nitrate, phosphorus, organic matter, and any other elements necessary for or helpful to plant growth.

**"Organic fertilizer"** means any carbon based by-product from the processing of animals or vegetable substances that contain sufficient plant nutrients to be of value as fertilizers.

**"Person"** means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

**"Private Nutrient Handler"** means a person in the State who applies organic or inorganic nutrients to lands or waters he/she owns, leases, or otherwise controls.

**"Program Administrator"** or "Nutrient Management Program Administrator" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program.

"**Secretary**" means the Secretary of the Delaware Department of Agriculture or his/her designee.

"**State Nutrient Management Program**" or "**SNMP**" means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

## **4.0 Certification Categories and Activities Requiring Certification**

4.1 No later than January 1, 2004, any person who engages in any of the following activities must have the applicable certificate or certificates required by and issued pursuant to these regulations, as follows:

4.1.1 Nutrient generator certification - A nutrient generator who owns or operates any animal feeding operation in excess of eight animal units must have a nutrient generator certificate.

4.1.2 Private nutrient handler certification - A private nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters owned, leased, or otherwise controlled by such handler must have a private nutrient handler certificate.

4.1.3 Commercial nutrient handler certification - A commercial nutrient handler who, on an annual basis, applies nutrients to 10 acres or greater of land or waters of the state must have a commercial nutrient handler certificate.

4.1.4 Nutrient consultant certification - A nutrient consultant who is engaged in the provision of nutrient management advice or the formulation of a nutrient management plan or in nutrient management planning as it relates to the application or disposal of nutrients at or from a specific site in the State of Delaware must have a nutrient consultant certificate.

4.2 These certification requirements shall not apply to individuals who perform services under the direct supervision of a certified person, provided that the certified person assures that such individuals act in accordance with the standards or practices which the certified person would follow if such person performed the service. Nor shall the certification requirements of this section apply to persons who utilize a person certified under these regulations to conduct the activities identified in this section, provided that such persons do not engage in any of the activities themselves and the certified person is certified at the time the activities are undertaken.

4.3 Conditional certifications may be issued for any reason specified by the Commission and shall be issued for periods not to exceed one year.

## **5.0 Certification Requirements**

5.1 Any person who seeks a certification shall file with the Commission an application on a form provided by the Commission, along with the application fee. The minimum requirements for the certifications follow.

5.2 Nutrient generator certificates - To obtain a nutrient generator certificate, the applicant must take and successfully complete at least 6 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.3 Private nutrient handler - To obtain a private nutrient handler certificate, the applicant must take and successfully complete at least 9 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.4 Commercial nutrient handler - To obtain a commercial nutrient handler certificate the following criteria must be satisfied:

5.4.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.4.2 The applicant must pass a written test approved by the Commission.

5.5 Nutrient consultant - To obtain a nutrient consultant certificate the following criteria must be satisfied:

5.5.1 The applicant must take and successfully complete at least 12 credits of educational course work as approved by the Commission or Program Administrator. Proof of such completion of course work shall be submitted with the application.

5.5.2 The applicant must pass a written test approved by the Commission.

## **6.0 Nutrient Handling Requirements**

6.1 The application of Nitrogen and Phosphorus based commercial inorganic fertilizers shall be prohibited by anyone holding certification or required to be certified pursuant to 3 Del.C. 2242 and section 4.0 herein , when one of the following conditions exist:

6.1.1 The surface area of application is impervious such as sidewalks, roads and other paved areas

and the misdirected commercial inorganic fertilizer is not removed on the same day of application:

6.1.2 The surface area is covered by snow or frozen for a 24 hour period or greater; or

6.1.3 The date of application is between December 1 and February 15.

6.2 An exception may be granted by a Certified Nutrient Consultant provided the nitrogen application rate does not exceed 1lb. /1,000 ft<sup>2</sup> or 43 lbs/acre and provided the following conditions exist:

6.2.1 The crop receiving commercial fertilizer is actively growing; or

6.2.1.2 Conditions deemed scientifically agronomical by the Nutrient Consultant exist justifying the exemption; and

6.2.2 The State Nutrient Management Program is informed of the exemption.

6.3 The application of organic fertilizers to any surface area covered by snow or frozen for a 24 hour period or greater is prohibited by anyone holding certification or required to be certified pursuant to 3 Del.C. 2242 and section 4.0 herein.

### **67.0 Reciprocity**

67.1 Notwithstanding the requirements of Section 5.0, supra, any person may obtain a certificate under these regulations if all the following requirements are satisfied.

67.2 The applicant must submit an application for the applicable certificate on a form provided by the Commission, along with the application fee.

67.3 The applicant must have a valid certificate or equivalent authorization, such as a license for the certificated activity, from another state or organization that requires qualifications at least as rigorous as those required under these regulations and approved by the Commission.

67.4 The applicant must pass a test approved by the Commission related to specific Delaware Nutrient Management requirements. The Commission may in its sole discretion waive this test requirement.

### **78.0 Continuing Education**

78.1 After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:

78.1.1 Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.

78.1.2 Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

78.1.3 Commercial nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

78.1.4 Nutrient consultants - 5 credits of continuing education each year following the issuance of the certification.

78.2 Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.

78.3 Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

**9 DE Reg. 966 (12/01/05)**

### **89.0 Duration of Certificates and Certification Fees**

89.1 Certificates normally will be issued and renewed for periods of three years for nutrient generators, private nutrient handlers, and commercial nutrient handlers. Certified nutrient consultants will be issued and renewed certifications annually.

89.2 Certificate fees are due with the application. The fee for a one-year certificate issued to nutrient consultants shall be \$100.00. The certificate fee for commercial nutrient handlers for a three-year certificate shall be \$150.00.

89.3 No fee will be charged for certification of a nutrient generator or a private nutrient handler.

### **910.0 Suspensions, Modifications, and Revocations**

910.1 The Commission may, after notice and opportunity for hearing, suspend, modify, or revoke any certificate where the Commission has reasonable grounds to believe that the certificate holder is responsible for

violations of the nutrient management statute (Title 3, Chapter 22, of the **Delaware Code**) or Commission regulations. The Commission shall furnish the person accused of a violation with notice of the time and place of the hearing, which notice shall be served personally or by registered mail directly to such person's place of business or last known address with postage fully paid no sooner than 10 days but within 21 days of the time fixed for the hearing.

#### **4011.0 Certification Renewals**

4011.1 At least 60 days before the expiration of a certificate, the certificate holder shall file an application with the Commission for renewal of the certificate, along with the certification fee.

4011.2 Nutrient consultants must file with the application and fee evidence that the consultant prepared at least one nutrient management plan during the preceding three-year period. If no such plan was prepared, the certificate shall not be renewed.

4011.3 The certificate holders must also supply with the application and renewal fee evidence that they have complied with the continuing education and record keeping and reporting requirements contained in these regulations.

4011.4 Absent good cause for failure to timely file an application for renewal in compliance with these requirements, the certificate holder must reapply for the certificate in the same manner required for the issuance of the original certificate.

4011.5 Decisions to refuse renewal of a certificate shall be final and conclusive unless appealed to the Commission pursuant to Section 2262, Chapter 22, of the **Delaware Code**.

#### **4412.0 Appeals to the Secretary**

All decisions of the Commission under this regulation shall be final and conclusive unless appealed to the Secretary pursuant to Section 2263, Chapter 22, of the **Delaware Code**. Provided, however, that the denial of a certificate pursuant to Sections 2243 or 2245, Chapter 22, of the **Delaware Code** shall first be appealed to the Commission which shall hold a hearing.

#### **4213.0 Record Keeping.**

4213.1 Nutrient generators shall record and keep the following available for inspection by the Secretary or the Commission:

4213.1.1 A contemporaneously recorded log that contains the dates, approximate quantities, locations, and disposition (stored, shipped, etc.) of nutrients that are applied to land or transported from land owned, leased or otherwise controlled by the Nutrient Generator.

4213.1.2 A copy of any applicable nutrient management plan.

4213.2 Private nutrient handlers shall record and keep the following available for inspection by the Secretary or the Commission:

4213.2.1 A contemporaneously recorded log showing the dates, locations, approximate quantities, acreage and methods of nutrient application.

4213.2.2 A copy of any applicable nutrient management plan.

4213.3 Commercial nutrient handlers shall prepare and keep available for inspection by the Secretary or the Commission, a contemporaneously recorded log showing the dates, locations, approximate quantities, acreage, and methods of nutrient application.

4213.4 Nutrient consultants shall prepare and/or keep available for inspection by the Secretary or the Commission, copies of any written materials prepared by the nutrient consultants or at their direction that establish how nutrients are to be managed at specific sites within Delaware, such as nutrient management plans.

4213.5 The information required in this section shall be kept and maintained for a period of 6 years.

#### **4314.0 Effective Date.**

These regulations shall become effective on January 10, 2001

**4 DE Reg. 1117 (1/1/01)**

**1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations****PREAMBLE**

These regulations have been developed pursuant to 3 **Del.C.** Ch. 22 [72 **Del. Laws**, c. 60]. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing a nutrient management planning program and the development of nutrient management plans. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

**1.0 Authority**

1.1 These regulations are promulgated pursuant to the authority provided by 3 **Del.C.**, Ch. 22, §§2220 and 2221.

**2.0 Purpose**

2.1 The purpose of these regulations is to establish requirements for implementation of mandatory nutrient management plan reporting pursuant to Section 5, 72 **Del. Laws**, c. 60.

**3.0 Registration Requirement For Persons Selected For Mandatory Nutrient Management Plan Reporting Pursuant To Section 5, 72 Del. Laws, c. 60.**

3.1 Persons notified that they have been selected by the Commission to be phased into the nutrient management planning program and mandatory nutrient management plan reporting (pursuant to Section 5, 72 **Del. Laws**, c. 60) shall register with the Commission within thirty (30) days of receiving such notice. Registration shall be made in writing, by completing and submitting, to the Nutrient Management Program Administrator, a registration form approved by the Commission.

3.2 Failure to register within the required period shall subject the person(s) failing to respond to the penalty provisions of 3 **Del.C.**, Ch. 22.

3.3 If the Commission sends such notification by registered mail, the return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the person(s) or the latter's agent; and the notation of refusal shall constitute presumptive evidence that the refusal was by the person(s) or the latter's agent.

**4.0 Requirement for Nutrient Management Plan and/or Animal Waste Management Plan in accordance with standards outlined in 3 Del.C. § 2290 et. al. by January 1, 2007.**

4.1 All animal feeding operations with greater than 8 animal units or any person who owns, leases or otherwise controls property in excess of 10 acres upon which nutrients are applied shall develop and implement a nutrient management plan and/or an animal waste management plan in accordance with the standards outlined in 3 Del.C. §2200 et al. by January 1, 2007.

4.2 Any animal feeding operation or person requiring a nutrient management plan and/or an animal waste management plan after January 1, 2007, shall have 180 days from the date the property owner or manager assumes control of the animal feeding operation with greater than 8 animal units or owns, leases or otherwise controls property in excess of 10 acres upon which nutrients are applied to develop and implement a nutrient management plan and/or an animal waste management plan.

4.3 Non-compliance with the nutrient management statute and regulations may result in an enforcement action and the imposition of fines and penalties as set forth in the Nutrient Management Law (3 **Del.C.** §2280, et. al).

**7 DE Reg. 160 (8/1/03)**

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 398

### PUBLIC NOTICE

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

##### 398 Degree Granting Institutions of Higher Education

#### 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 398 Degree Granting Institutions of Higher Education in order to add definitions and improve the clarity of the process and of the appeal procedures described in the regulation. The title and the number of the regulation have also been changed to 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education thus moving the regulation from the 300 Section to the 200 Section of the **Administrative Code**.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses approval of institutions of higher education not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses approval of institutions of higher education not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses approval of institutions of higher education not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses approval of institutions of higher education not legal rights issues.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation addresses approval of institutions of higher education not local schools or local board issues.

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 addresses approval of institutions of higher education not local schools or local board issues.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State or to the local school boards since the regulation does not affect them.

## ~~398 Degree Granting Institutions of Higher Education~~

### 292 Post Secondary Institutions and Degree Granting Institutions of Higher Education

#### 1.0 Definitions

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

**“Agent”** means any person representing an institution or employed by an institution, that contacts persons in any manner for the purpose of soliciting enrollment in any course, program, or degree.

**“Degree”** includes, but is not limited, to any academic credential or designation not less than, but including associate, bachelor, master, doctor, or fellow, whether earned or honorary, which signifies, purports, or is generally taken to signify partial or satisfactory completion of the requirements of an academic, occupational, business, or other program of study beyond the secondary school level.

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

**“Department Approval”** means the process by which a specific institution is recognized by the Department of Education as meeting state standards for approval for such institution.

**“Institution”** means a post secondary institution or institution of higher education.

**“Institution of Higher Education”** means a college, university or other post secondary institution authorized to confer degrees. For the purpose of this regulation, post secondary institutions and institutions of higher education shall have the same meaning.

**“Middle States”** means the Middle States Commission on Higher Education or the standards for accreditation used by Middle States Commission on Higher Education.

**“National Accrediting Agency”** means a nationally recognized accrediting agency or association that appears on the list published by the U.S. Secretary of Education.

**“Post Secondary Education”** means a higher level of education or noncompulsory education level following completion of a secondary education, such as high school or secondary school. Post secondary education includes undergraduate and postgraduate education including associates, baccalaureate, masters, or postgraduate degrees. For the context of this regulation, post secondary education does not include vocational or professional training otherwise included and regulated as Private Business and Trade schools and not resulting in a degree.

**“Post Secondary Institution or Institution of Post Secondary Education”** means an institution of higher education offering post secondary education usually with the intent to confer academic degrees. For the purpose of this regulation, post secondary institutions and institutions of higher education shall have the same meaning.

**“Private Business and Trade Schools”** has the same meaning as in 14 Del.C. §8501(1).

**“Program or Program of Courses”** means the specific sequence of courses and experiences required by an institution. Program includes an organized unit of subject matter in which instruction is offered within a given time and for which credit is given toward completion of training toward a predetermined occupational or academic credential.

**“Regional Accrediting Agency”** means an agency such as the Commission on Higher Education of the Middle States Association of Colleges and Schools or others that appear on the list published as Regional Institutional Accrediting Agencies, by the U.S. Secretary of Education.

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

#### 2.0 Procedures for Securing Approval

2.1 Institutions may be granted one of three levels of recognition: Recognized Applicant, Provisional Approval or Full Approval for five years.

2.1.1 Recognized Applicant: An institution shall complete the questionnaire, Application to Confer Academic and Honorary Degrees. This material, presented in duplicate, is reviewed by an evaluation team mutually acceptable to the institution and the Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution shall be notified of Recognized Applicant status valid for one or more years. Recognized Applicant status may be extended yearly or may be terminated. Recommendations shall be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than

the 7th semester. Institutions offering programs of varying duration shall request evaluation for Provisional Approval in a time frame appropriate to the length of the program.

~~2.1.2 Provisional Approval: Following the on site visit, required for this second level of approval, the team shall recommend to the Secretary of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.~~

~~2.1.2.1 An institution receiving Provisional Approval may incorporate under ~~8 Del.C. §125~~ with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter shall be amended to include the degree granting privilege. The institution shall retain this status until after the first class has been graduated.~~

~~2.1.2.2 An institution shall seek full approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The conferring of final approval may require a second on-site visit.~~

~~2.1.2.3 If a Provisionally Approved institution does not receive full approval within four years after the first graduating class, the Department of Education may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.~~

~~2.1.2.4 It shall be the responsibility of the Department of Education to keep Recognized Applicants and Provisionally Approved institutions apprised of the requirements they must meet in order to achieve the next level of recognition. The Department of Education shall require that an on-site visit to the Delaware location take place before moving to Final Approval.~~

~~2.1.2.5 For Final Approval an institution must meet the minimum standards that are found in 1.0. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department of Education reserves the right to use as additional criteria the regulations of the appropriate accrediting or approving agency. For example, the criteria established by the Accrediting Commission for Business Schools might be used as supplementary requirements to be applied to two-year proprietary business colleges; the standards of the American Association of Collegiate Schools of Business might be applied to nonprofit two- or four-year institutions. The Guidelines of the American Bar Association might be the basis of approving a law school or college. The standards established by the American Library Association will be applied to all college libraries except where more specific standards are available for professional libraries such as a law library.~~

~~2.1.3 Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the Department of Education. If such an institution is scheduled for a Regional Accreditation evaluation at the time of either the Final Approval or the five-year period review and the Department of Education has a representative on the evaluation team, the Department of Education may accept the Regional Approval in lieu of a separate evaluation.~~

~~2.1.3.1 Provisionally Approved and Fully Approved institutions shall keep the Department of Education informed of any changes in the facts as presented in their applications.~~

~~2.2 All expenses incurred by a visiting team at any stage in the approval procedures shall be borne by the institution requesting approval.~~

~~2.3 Proposals or descriptions for graduate programs shall be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.~~

## **2.0 Department Approval is Required prior to an Institution incorporating with the power to confer degrees. Operating or Offering any Courses in Delaware**

~~2.1 Pursuant to 14 Del.C. §121 (a) (16) and 122(b)(3), (8), and 8 Del.C. §125, no corporation or Institution other than those authorized in Title 14, shall without first having received approval from the Department:~~

~~2.1.1 incorporate in Delaware with the power to confer degrees; or~~

~~2.1.2 offer courses, programs of courses, or degrees within Delaware.~~

~~2.2 This regulation shall not apply to Private Business and Trade Schools to the extent they do not offer~~

degrees and are governed by 14 Del.C. Chapter 85.

### **43.0 Standards for Approval of Post-Secondary Institutions**

An institution seeking Department approval shall adopt the following:

#### 4.3.1 Purposes and Objectives

4.3.1.1 An institution shall present a well defined statement of the broad purposes or goals of the institution and the specific objectives for the students both generally and in each special program or area of study. This statement shall include the reasons for the existence of the institution in its particular community. In addition, the purposes shall be reflected in the types of students and sequence of the offerings of the college in general and in specific programs.

4.3.1.1.1 ~~The An Institution's~~ specific objectives shall be presented in behavioral terms and shall be the basis for future student and program evaluation.

4.1.1.2 ~~The Department's 14 DE Admin. Code 225 Prohibition of Discrimination that prohibits discrimination on the basis of race, color, creed, national origin, disability, age or gender in programs receiving approval from the Department applies to Degree Granting Institutions of Higher Education approved by the Department of Education.~~

3.1.1.2 All institutions shall adopt the Department's antidiscrimination regulation 14 DE

### **Admin. Code 225.**

#### 43.2 Administrative Organization

43.2.1 The organizational pattern of the institution as a two year associate or a four year baccalaureate or graduate or professional institution, or as a single or multipurpose institution, shall be clearly defined and shall be related to the purposes of the institution.

43.2.2 The institution shall present a definite statement, including an organizational chart, or its administrative structure and a description of the functions and interrelationships of the governing board (board of trustees), advisory board (if any), the president and the administrative staff, and the faculty.

43.2.3 The functions and responsibilities of the board shall be clearly defined in the Bylaws.

43.2.4 The board shall be moderate in size (between 9 and 25 members) and shall represent different points of view and interests, be selected from persons interested in the institution, willing to give the time necessary for board matters and be appointed or elected for regular or overlapping terms of office. The large majority of the members ~~should~~ shall be other than the salaried administrators of the institution.

43.2.5 ~~There shall be evidence of~~ established channels of communication between the governing board and the administration and faculty.

43.2.6 ~~There shall be evidence that the administrative staff has the~~ The administrative staff shall have the necessary time and assistance to enable members to discharge their duties efficiently.

43.2.7 ~~There shall be evidence that the administrative staff is aware of its three major functions; The administrative staff functions shall include~~ selection, supervision and support of faculty; selection and supervision of the students; and operation of the facilities for the benefit of faculty and students. Institutions shall adopt a policy to ensure that the administrative staff is aware of the above three major functions.

43.2.8 There shall be definite policies and procedures concerning academic freedom, tenure, retirement, ~~pensions, pension plans,~~ leaves of absence, sick leave, the determination of rank and promotions, and the professional development of the faculty, administrative officers and professional staff.

#### 43.3 Financial Administration

43.3.1 The institution shall ~~demonstrate~~ have financial resources adequate for the effective accomplishment of its announced purposes. The income shall be so expended as to provide equitably for instruction, administration, maintenance, equipment and supplies, library, and student activities.

3.3.1.1 An institution shall have an adequate reserve in unencumbered funds.

3.3.1.2 Financial statements for both beginning and continuing institutions shall contain the following:

3.3.1.2.1 Reflect clearly the sources of income, categories of expenditure, and the profit or nonprofit status of the institution;

3.3.1.2.2 Show the nature and amount of indebtedness, if any; how incurred; and the provision for amortization; and

3.3.1.2.3 A five year financial projection.

3.3.1.3 The institution shall indicate agreement or provide a surety bond for the protection of

the contractual rights of students.

3.3.1.4 The institution shall adopt standards for accounting and financial reporting. The structure shall account for federal and state monies, as well as other sources of income and expenditures.

3.3.1.4.1 The institution shall conduct an external independent annual audit on a scheduled basis that shall be reviewed by its governing board.

43.3.2 The business management shall be under the direction of a responsible bonded financial officer charged with the preparation and supervision of the budget in accordance with sound financial and educational practices.

43.3.3 A continuing institution shall present an operating statement and proposed balance sheet for the fiscal year and a budget summary for each present fiscal year, comparable in amount of detail to those customarily prepared for trustees.

43.3.4 Information shall be available on the annual surplus or deficit at the end of each of the past five fiscal years.

43.3.5 The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the National Association of College and University Business Officers (NACUBO).

#### 43.4 Student Personnel Program

43.4.1 When appropriate, an institution shall ~~provide evidence of~~ have an adequate student personnel program, including student activities and a counseling service and the program shall be directed by a professionally trained person whose responsibilities embrace the general welfare and discipline of the students. Services shall aim to provide counseling, advocacy, intervention, and referral services so that students can resolve problems that might otherwise interfere with the achievement of their educational objectives, including services for personal concerns, academic choices, and career planning.

43.4.2 Provision shall be made in the counseling service for testing of students' abilities and interests as aids to student self understanding, educational planning and career decisions.

43.4.3 Depending on the scope of the institution ~~and whether it is residential or nonresidential in character,~~ the student personnel program shall be concerned with the ~~living arrangements,~~ and health needs of students, and with the development of a meaningful program of social, recreational, and athletic, education and cultural out of class activities. If the institution is residential, it shall also be concerned with student living arrangements.

#### 43.5 Admission Policies and Procedures

43.5.1 The institution shall have a carefully stated selective admissions policy that is appropriate to the institution's purposes and organization. Admission criteria shall be established in consideration of the abilities needed by all students to achieve satisfactorily in the various programs of study offered. The institution shall operate in compliance with announced admission policies and procedures.

43.5.2 The admissions office shall be adequately staffed to carry out the admissions policies and procedures.

43.5.3 For admission, the institution shall require either graduation from an accredited secondary school or other recognized standards such as the General Education Development Test (GED) scores or the College Entrance Examination Board scores. The applicant's file ~~should~~ shall contain a complete transcript of the school record including courses, grades, and other appropriate information properly signed by the high school principal, guidance officer or other duly authorized school official.

43.5.4 The institution shall ~~supply evidence such as~~ provide correlations between admission credentials and freshman grades, academic attrition studies and objective test results ~~and others,~~ to demonstrate that it selects students qualified to pursue successfully the program of study for which admitted. The institution shall admit students in accordance with its published criteria.

43.5.4.1 The institution may, at its discretion employ more flexible and experimental admissions standards but ~~should~~ shall document with supporting information the criteria used to judge these students for admission and evaluate these criteria based on experience.

#### 43.6 Faculty

43.6.1 The number of faculty shall be adequate to support the mission of the institution, to serve the projected number of students ~~at an acceptable ratio~~ and to insure the quality and the integrity of its academic programs. Documentation of faculty qualifications in the form of resumes ~~must~~ shall be available to the Department upon request. The institution shall have clearly defined criteria for faculty appointments, incentives for retention, and provisions for inservice growth and development.

43.6.2 There shall be a well planned incentive program designed for retention of faculty. When applicable, such a program shall include policies on academic freedom, tenure, retirement, ~~pensions~~ pension plans, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There shall be a clear statement of criteria for each rank and the requirements for promotion.

43.6.3 There shall be a thorough orientation for all new faculty, periodic evaluation and critique of instructional methods, and, where appropriate, evidence of research accomplishment.

43.6.4 If faculty members serve as advisors, they shall be fully informed about degree requirements, transfer regulations and any other specific requirements such as state teacher certification or professional licensing.

43.6.5 There shall be ~~evidence that there is~~ a faculty organization to carry out the respective educational responsibilities.

#### 43.7 Program

43.7.1 The number and variety of curricula shall be determined by the purposes of the institution, the size of the student body, and the available personnel and resources of the institution.

43.7.2 Curricula in all fields shall evidence recognition of the relationships between a broad education and the acquisition of techniques and skills. Degree requirements for each curriculum shall be clearly stated.

43.7.3 Transfer and career programs in a junior college shall include a block of courses in liberal education.

3.7.4 Descriptions for graduate programs shall be very carefully detailed with emphasis on admission requirements, standards for maintaining graduate status, qualifications of staff, opportunities for research, adaptation of programs to individual needs, and any other facts pertinent to a good graduate program.

#### 43.8 Graduation Requirements

43.8.1 For authorization to grant an associate degree, an institution shall require 60 semester hours of academic and pre professional work or equivalent, give credit only for courses completed with a passing grade of ~~the~~ (D) or its Institutional equivalent and require an average of 2.0 or specify clearly what index is required for graduation.

43.8.2 For authorization to grant a baccalaureate degree, an institution shall require a minimum of 120 semester hours for graduation and no less than a 2.0 overall average (on a 4.0 scale).

43.8.3 All graduation requirements shall be clearly delineated for any institution.

#### 43.9 Facilities

43.9.1 Administrative and faculty facilities, classrooms, library, laboratories, and student activity centers shall be suitable for their specific purposes, and convenience for advisement and scheduling, and shall promote the highest standards of learning, health and personal welfare. The institution shall comply with applicable state and federal standards, with respect to the accessibility of facilities by persons with disabilities.

43.9.2 Beginning institutions and those planning expansion programs shall have well designed plans for appropriate building expansion.

#### 43.10 Library

43.10.1 The institution shall provide library facilities adequate to the effective realization of its stated objectives. The scope of resources shall follow the current Middle States recommendation ~~that the resources must be in reasonable proportion to the needs to be served, but numbers alone are no assurance of excellence. Most important are quality, accessibility, availability, and delivery of resources on site and elsewhere.~~ The Secretary may allow the institution flexibility from the Middle States recommendation, if the Secretary determines within his or her discretion that the library provides alternative access to resources and will provide adequately for students.

43.10.2 In the case of the non Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities shall be imported on a temporary basis or provided through contractual arrangements so that the material available will provide adequate support to the courses offered.

#### 43.11 Outcomes

43.11.1 The institution shall describe its means for assessing the extent to which it achieves its stated purposes and objectives insofar as this is measurable.

43.11.2 Plans for the measurement of outcomes shall include evaluation of undergraduate achievement based on standard tests; a study of the performance of graduates in graduate or professional schools (or of transfer students in the junior or senior years); and a long term study of the achievements based on data gathered periodically and systematically.

#### 43.12 Catalog and Announcements

43.12.1 The catalogs and all other announcements shall give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally

responsible persons and shall include specifically:

- 43.12.1.1 Identification data, such as volume number, and date of publication.
- 43.12.1.2 The Names of the institution, the governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.
- 43.12.1.3 A complete calendar for the academic year.
- 43.12.1.4 A statement of its accredited or approval status.
- 43.12.1.5 A statement of the origin and objectives of the institution.
- 43.12.1.6 Admission and graduation policies and requirements.
- 43.12.1.7 A Ddetailed schedule of all fees and other charges as well as refund policies.
- 43.12.1.8 Information concerning scholarship funds.
- 43.12.1.9 A Description of location of the institution; buildings, grounds and equipment.
- 43.12.1.10 A List of degrees conferred and requirements for each degree.
- 43.12.1.11 An Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions shall indicate prerequisites, if any.
- 43.12.1.12 The Number of weeks of instruction per semester and of class meetings per week.
- 3.12.1.13 A policy for the screening of staff including any policy on criminal background checks.

## **4.0 Levels of Approval**

The Department shall review applications and shall deny or grant approval or may request additional information prior to denial.

4.1 Institutions may be granted one of three levels of approval: Recognized Applicant, Provisional Approval or Full Approval.

### 4.1.1 Recognized Applicant

Recognized Applicant is the initial level of approval granted by the Department. The status of Recognized Applicant does not carry authorization to confer degrees.

4.1.1.1 An institution shall begin the approval process by completing the Department's application and submitting the completed application and all documentation in duplicate to the Department. The application and supporting material shall be reviewed by the Department or an evaluation team selected by the Department. After the review the Department may require a meeting with the Board of Trustees or the administrative staff of the institution or both. The Department may also require an on site visit.

4.1.1.2 If the Department determines that based on all the facts gained the institution appears to meet, or shows promise of meeting a significant portion of the standards as stated in this regulation, the institution shall be granted Recognized Applicant status.

4.1.1.3 Recognized Applicant status may be valid for one or more years. If the Department determines that the institution continues to meet the requirements of this regulation and is making satisfactory progress towards the next level of recognition, Recognized Applicant status may be extended yearly. If the Department determines that the institution does not continues to meet the requirements of this regulation or is not making satisfactory progress towards the next level of recognition, Recognized Applicant status may be terminated.

4.1.1.3.1 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report with the Department. The Department or the evaluation committee may make an on site visit to the institution in order to verify the contents of the report and evaluate progress to date.

4.1.1.3.2 A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester and a four year institution, no later than the 7th semester. Institutions offering programs of varying duration shall request evaluation for Provisional Approval in a time frame appropriate to the length of the program.

4.1.1.4 The Department or evaluation committee shall make recommendations for any changes in or additions to the information previously submitted that would be necessary for consideration for Provisional Approval.

4.1.1.5 A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

## PROPOSED REGULATIONS

4.1.1.6 If a Recognized Applicant fails to file a progress report, keep the Department informed of changes or request annually renewal of their status as a Recognized Applicant or advancement to provisional approval, the institution's approval automatically expires one year after approval. If an institution's approval expires, the institution shall be required to begin the application process from the beginning and submit a new application.

### 4.1.2 Provisional Approval

Provisional Approval is the second level of approval granted by the Department.

4.1.2.1 Following the review of the request for provisional approval, the evaluation committee, if utilized by the Department, shall recommend to the Department and the Department shall determine that either the institution continue to be recognized only as an Recognized Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Recognized Applicant status shall be informed of the changes and improvements necessary to be eligible for Provisional Approval status. There is no guarantee that a Recognized Applicant institution will be given either Provisional or Full Approval.

4.1.2.2 An institution receiving Provisional Approval may incorporate under 8 Del.C. §125 with the right to confer a degree. If the institution has previously incorporated without the right to confer a degree, the charter shall be amended to include the degree granting privilege. The institution shall retain this status until after the first class has been graduated.

4.1.2.3 An institution shall seek Full Approval within a minimum of two years following the first graduation but may petition for such approval within the first year. The Department may require an on site visit prior to conferring recognition of Full Approval.

4.1.2.4 If a Provisionally Approved institution does not receive Full Approval within four years after the first graduating class, the Department may withdraw all approval and inform the Corporation Division of the State of Delaware that the section in the charter for the institution which refers to the right to confer degrees is no longer valid.

4.1.2.5 The Department shall provide notice to Recognized Applicants and Provisionally Approved institutions of the requirements they must meet in order to achieve the next level of recognition. If an institution has a Delaware location, the Department shall require ~~The Department shall require that an on site visit to the Delaware location before moving to Full Approval.~~

### 4.1.3 Full Approval

Full Approval is the third level of approval granted by the Department.

4.1.3.1 For Full Approval an institution shall meet the minimum standards that are found in this regulation. However, for certain types of organizations such as a junior college of business, or a specialized area within a college such as the library, or a specialized college or school offering degrees, the Department within its discretion may use as additional criteria the regulations of the appropriate accrediting or approving agency.

4.1.3.2 Fully Approved institutions shall retain such status for a period of no longer than five years. Prior to the expiration of the five (5) year term, the institution shall file a progress report and the Department or evaluation committee shall complete an on site visit. If an institution fails to seek renewal of their Full Approval status their recognition shall expire. After the initial renewal, all Fully Approved institutions shall continue to file for renewal for at least every five years, prior to the expiration of their approval.

4.1.4 If an institution is scheduled for a Regional Accreditation evaluation at the time of either the Full Approval or the five year period review and the Department of Education has a representative on the evaluation team, the Department of Education may accept the Regional Approval in lieu of a separate evaluation.

4.1.5 All institutions shall keep the Department informed of any changes in the facts as presented in their applications.

4.1.6 All expenses incurred by a visiting team at any stage in the approval or renewal procedures shall be borne by the institution requesting approval.

### **3.05.0 Institutions of Higher Education Application Degree Granting Authority Application Process**

35.1 The Applicant Institution shall complete detailed application questionnaires ~~a detailed application on forms approved by the Department~~ and submit data as requested ~~to the Department~~.

35.2 The Secretary shall ~~may, if she/he~~ ~~i~~ determines that it would be beneficial, appoint an evaluation committee to advise the Secretary and the Applicant Institution from the time of application through the final approval ~~aid the Department in the evaluation process.~~

3.2.4 ~~The committee shall be composed of persons from the Department of Education, the~~

~~University of Delaware and other persons with experience in the field of higher education and shall recommend to the Secretary of Education that the Institution receive status as a Recognized Applicant or deny recognition. The status of Recognized Applicant does not carry authorization to confer degrees.~~

~~3.3 Near the end of the first full school year of classes but prior to the close of classes, the institution shall file a progress report as described and requested by the committee. The evaluation committee will make an on site visit to the institution in order to verify the contents of the report and evaluate progress to date.~~

~~35.3.4 A When an evaluation committee is used by the Department, a written report of the committee's action shall be sent to the Secretary of Education Department with a recommendation to withdraw approval, to continue the status of Recognized Applicant along with a listing of any specific recommendations to be met by the institution or to grant new status of Provisional Approval, with the right to confer a degree.~~

~~35.4 At a time one or two years following the graduation of the first class from the institution but not later than three years, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee selected by the Department; the institution shall present a third progress report and the Department or committee shall make an on site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate regional or specialized accrediting agency, it may be recommended to the Secretary of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on site visit from the Department or evaluating committee. The recommendation on this occasion may be for final approval Full Approval of the degree granting authority of the institution. It will be within the Secretary's discretion to determine if the approval by the other accrediting agency meets the requirements of this regulation and whether to accept the on site visit and favorable report in lieu of any section of this regulation.~~

~~3.5 If approval of the institution is denied at any of the three major steps described in this procedure, the institution shall have the right of appeal to the Department of Education but in such appeal will be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.~~

~~3.6 Any costs incidental to the evaluation and approval of an institution shall be the responsibility of that applicant institution.~~

## 5.5 Right to Hearing

~~5.5.1 If approval of the institution is denied at any of the three levels of approval, - the institution shall have the right of appeal to the Secretary but in such appeal shall be required to submit necessary evidence to show cause why approval should be granted or why temporary approval should be extended for a longer period of time.~~

~~5.5.2 The Department shall give written notice to the applicant of the denial and the reasons therefore. The notice of denial shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Secretary within twenty (20) calendar days.~~

~~5.5.3 Hearings shall be conducted in accordance with the Department's Hearing Procedures and Rules.~~

## **4-0 6.0 Additional Procedures for Approval of Non Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware**

~~4.1 6.1 Out of state institutions wishing to offer credit bearing courses, programs of courses, or degree programs in Delaware shall make application to the Secretary of Education Department at least one academic year before the requested date of implementation.~~

~~4.2 6.2 Final application forms with supporting documents shall be presented to the Secretary of Education Department at least six months prior to the requested date of implementation.~~

~~4.3 An accreditation agency designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.~~

~~4.4 Even though an institution is regionally accredited, the Department of Education may at any time require the institution to present a complete and documented application for license if complaints directed against the Delaware operation of the institution by Delaware enrollees seem to warrant a more thorough review.~~

~~6.3 The Institution shall prove that the degree programs conform to the minimum standards established by the Department for similar institutions operating within the State. The Secretary may within his or her discretion, consider if an institution has been regionally accredited and determine if the regional accreditation meets the standards listed in this regulation and may accept that accreditation for part or all of the requirements in this regulation.~~

However, an accreditation agency designation of Recognized Applicant or any other less than full accreditation designation shall not be accepted.

~~4.56.4~~ The Institution shall prove that the proposed site or facility is in compliance with applicable Federal, Delaware and local governmental laws and standards pertaining to zoning, occupancy, accessibility, fire, health and safety.

~~4.6~~ The Institution shall prove that the degree programs conform to the minimum standards established by the Department of Education for similar institutions operating within the State.

~~4.76.5~~ The Institution shall guarantee, by resolution of their Board of Trustees, that their operations in the state of Delaware will be financially solvent.

~~4.86.6~~ Programs shall be approved for periods of one to five years but initially programs shall be approved for up to three years. Credit bearing courses, but not degree programs shall be approved for only one year.

~~4.96.7~~ After the initial approval, renewal approval will be contingent upon a favorable recommendation based upon periodic review by the staff of the Department of Education and usually if deemed necessary by the Secretary within her discretion, with the assistance of a consultant(s) from an institution of higher education with expertise in the program or course offered.

~~4.106.8~~ The institution shall ~~be obligated to keep the Secretary of Education~~ Department informed of the names and addresses of those responsible for directing the programs from the parent campus, the names of instructors, the locations of all sites in Delaware where instruction is offered, and the names and addresses of students enrolled in the program or course.

~~4.116.9~~ A license fee of \$250.00 per out of state institution shall be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, shall pay a minimum fee of \$150.00.

~~4.126.10~~ Any and all costs incidental to the evaluation and approval of a program or course, except the salary of personnel from publicly supported education institutions in Delaware, shall be the responsibility of the applicant institution.

~~4.136.11~~ Each year the Department of Education shall publish a list of all programs and courses approved to operate in the State of Delaware.

~~4.146.12~~ Agents

Every agent representing an institution as herein defined, ~~located outside the state of Delaware whether such institution is located inside the state of Delaware or any other state or in any nation of the world, that contacts persons within the state of Delaware for the purpose of soliciting enrollment in the institution~~, shall make written application for an agent's permit to the Department on forms prepared and furnished by the Department. Each application shall state the name of the school which the applicant will represent, contain evidence of the honesty, truthfulness and integrity of the applicant, shall be verified under oath by ~~him/her the applicant~~, and shall be accompanied by the recommendation of two reputable persons, certifying that the applicant is truthful, honest, and of good reputation, and recommending that a permit, as an agent, be granted to the applicant. The fee for an original permit, as an agent, shall be determined by the Department and there shall be an annual renewal fee determined by the Department. A separate permit shall be obtained for each school represented by an agent.

~~4.14.46.12.1~~ Each applicant for a permit to serve as an agent shall submit with the application a fee in the amount of \$10.00 for the first application. This fee will be required for each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that ~~he/she the agent~~ will represent.

~~4.14.26.12.2~~ Each agent shall apply for a permit each year at the same time that the institution ~~he/she the agent~~ is to represent makes application for a Certificate of Approval or renewal. If the institution is not required to make application for renewal or continuation that year, the agent shall apply for renewal prior to the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

~~4.14.36.12.3~~ The lapse, suspension, revocation or non renewal of the certification of an institution for any cause shall make invalid all agent permits for that institution.

~~4.14.46.12.4~~ The institution shall report the discharge or resignation of any agent ~~shall be reported immediately to the Department of Education within thirty days~~.

~~4.14.56.12.5~~ To the extent that the Department determines any situation warrants it, the Department of Education shall be responsible for publicizing publicize the discontinuance of any certificate or permit.

~~4.14.6 In any instance where the owner of an institution indicates that he/she plans to serve as his own agent, separate fee for the agent permit will be waived, but the permit must be obtained. Any additional agents must obtain permits as otherwise described.~~

6.12.6 The fee for the agent permit shall be waived for the owner or the chief executive officer of the institution who also serves as its agent. Each individual shall still apply for and obtain an agent permit. Any additional agents must obtain permits as otherwise described.

~~4.15 Violations of the law and regulations relating to Institutions of Higher Education as herein described shall be referred to the Attorney General of the State of Delaware who shall assume responsibility for enforcement of the law and the regulations~~

6.12.7 The fees charged as filling and renewal fees are not refundable.

## **7.0 Violations of the Law**

Violations of the law and regulations relating to Institutions as herein described shall be referred to the Attorney General of the State of Delaware for any action or permitted or required by law.

## **5-0-8.0 Additional Procedures for Approval of Institutions of Higher Education, Located In Other States or Territories and Not Offering Programs In State**

~~5-8.1 Pursuant to 8 Del.C. §125, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, all institutions including those located outside of Delaware, and not offering programs in state, shall not incorporate in Delaware with the power to confer degrees without to the Department of Education for approval prior to incorporation. Prior to incorporating in Delaware with the power to confer degrees, an institution shall obtain approval from the Department pursuant to this regulation. A corporation shall provide documentation of official Department approval with any certificate of incorporation filled with the Secretary of State that includes the power to confer academic or honorary degrees.~~

~~58.1.1 With respect to these requests for incorporation, the Department of Education recognizes the following: 1) the interest of each state and territory of the United States to grant the authority to award degrees to institutions located within that state or territory; 2) the legitimate request of private colleges and universities located outside of Delaware to make a business decision to incorporate in the State; and 3) the Department's of Education's own right, pursuant to Section 125, to set reasonable limitations to ensure the quality of education offered by such institutions of higher education incorporated in Delaware.~~

~~58.1.2 The requirements of this regulation shall be the minimum criteria necessary to obtain Department approval. As a matter of comity, the Department of Education will shall not approve the incorporation of colleges, universities or other institutions offering credit bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally or regionally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as Nationally Recognized Accrediting Associations, by the Secretary of Education. The Secretary may within his or her discretion grant approval of the out of state institution based on the accreditation of a Nationally or Regionally Recognized Accrediting Association if after reviewing the complete application, the Secretary/he/she determines that the accreditation meets the minimum standards required in Delaware.~~

## **6-0 9.0 Notification**

The Department of Education shall inform the Presidents of Delaware's public and private institutions of higher education of institutions that have applied to offer programs in the state. This notification shall take place after the applicant institution has completed the initial application and after the Department has reviewed the application, but before an on site visit to the institution has been made.

## **7-0 10.0 Additional Programs After Initial approval**

Institutions shall request approval for programs to be added after the initial approval has been granted.

10.1 An institution shall submit a request for approval of additional program(s) on a Department form with supporting information and documentation as requested.

10.2 The Department shall review the additional programs based on the information previously submitted by the institution and the mission of the institution.

10.3 The Department shall determine if the additional program(s) meets the requirements of this regulation.

10.4 The additional program(s) may be granted provisional approval for a period of 1-3 years or to the date of the next institutional review if the time period is less than 1-3 years.

## **11.0 Annual Report**

Institutions shall be required to file Annual Integrated Postsecondary Education Data System (IPEDS) Reports as prescribed by with the Higher Education Commission.

## **12.0 Disposition of Student Records**

Prior to discontinuing operation or upon dissolution, all institutions shall comply with the requirements of 14 Del.C. §8530

5 DE Reg. 859 (10/1/01)

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 399

### PUBLIC NOTICE

#### 399 Approval of Teacher Education Programs

#### **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 399 Approval of Teacher Education Programs. The regulation is amended in order to bring the regulation in line with current procedures, add critical definitions and remove the references to the State Board of Education now that the Department of Education has total responsibility for the Program approval process for Educator Preparation Programs. The regulation is also amended to change the number of the regulation from 399 to 290 moving the regulation to Section 200 Administration and Operations and to change the name of the regulation to Approval of Educator Preparation Programs.

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

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the Approval of Educator Preparation Programs not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the Approval of Educator Preparation Programs not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the approval of Educator Preparation Programs not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the Approval of Educator Preparation Programs 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 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 and to the local school boards of compliance with the regulation.

## **399-Approval Of Teacher Education Programs**

~~**1.0 General Regulations:** All Programs of teacher education in Delaware Institutions of higher education that lead to teacher licensure shall be reviewed through a fair and uniform application of standards and all forms used shall be those developed by the Department of Education.~~

~~1.1 Reviews will be pursuant to the 1989 Standards of the National Association of State Directors of Teacher Education and Certification (NASDTEC).~~

~~1.2 Institutions that seek accreditation through the National Council for Accreditation of Teacher Education (NCATE) may meet the level set by the NASDTEC Standards by successfully completing the NCATE process, at both Institutional and individual Program levels.~~

~~1.3 All Institutions, whether they choose NCATE or NASDTEC routes of approval, also shall comply with the criteria for licensure and standards approved by the State Board of Education, where applicable, and these Regulations.~~

~~1.4 Institutions and Programs that seek accreditation through NCATE and the NCATE specialty organizations and fail to achieve such accreditation, may thereafter seek review pursuant to NASDTEC Standards for continued State approval.~~

~~1.5 On-site reviews, by a team assembled by the administrator of Programs for Institutions of higher education shall take place every five to seven years, or, if through NCATE, in accordance with the schedule set by NCATE.~~

~~1.6 A final report on the reviews shall be forwarded to the State Board for action. The report shall make recommendations for full approval, provisional approval, or disapproval of the Institution and of each of the individual Programs. Copies of the final action report shall be sent to the chief executive officer of the Institution and to the leader of the education unit.~~

~~1.7 All Programs approved under NASDTEC Standards, or through NCATE accreditation, and that meet Delaware criteria for licensure, will be forwarded to the NASDTEC Interstate Agreement Committee for review for reciprocity.~~

~~1.8 An Institution that has approved teacher education Programs may request interim provisional Program approval for new education Programs for licensure added between regularly scheduled State reviews. Documentation to be supplied to the administrator shall include:~~

~~1.8.1 A description of the Program for which approval is sought and other administrative information.~~

~~1.8.2 The curriculum for the Program, including syllabi for any new courses.~~

~~1.8.3 Descriptions of the expected outcomes of the Programs and of how these outcomes will be assessed.~~

~~1.8.4 Vitae for all new faculty delivering the Program.~~

~~1.8.5 An Institutional response to the specific NASDTEC or NCATE Standards for this Program area, and any applicable State Board of Education criteria.~~

~~1.8.6 Descriptions of materials, media and resources available for the Program, and how technology is integrated into the curriculum.~~

~~1.9 A Program meeting all requirements shall be given provisional approval; full approval may not be granted until a full on site review of the Institution takes place, or is directed by the State Board.~~

~~1.10 Experimental or innovative Programs that do not meet the Standards or the criteria may be allowed by the State Board. Such an allowance may be requested by submitting the material for new Programs, and where the Standards or criteria are not met, a rationale for the exception(s). Experimental or innovative Programs that are~~

approved by the State Board shall be given provisional approval; full approval may not be granted until a full on-site review of the Program takes place, or it is directed by the State Board.

1.11 Programs that have received only paper review, without full on-site verification will be granted provisional approval. Full approval may not be granted until a full on-site review of the Institution takes place, or is directed by the State Board.

1.12 All Delaware teacher education Programs shall undertake on-going self study.

1.12.1 Units and Programs approved through NCATE accreditation, shall comply with NCATE self study requirements. Copies of any reports to NCATE shall also be submitted to the administrator.

1.12.2 Institutions and Programs reviewed under NASDTEC requirements shall submit an annual report detailing how the weaknesses cited in the report have been addressed. The annual report shall be due to the administrator by June 30 of each year.

1.13 All persons participating as a part of the state team for an on-site review shall meet the requirements of 7.0 and 9.0.

1.14 All Programs shall submit portfolios to the Department of Education which meet the criteria listed in the Delaware Requirements for Portfolios.

1.14.1 Programs being reviewed by NCATE national specialty organizations shall submit to the Department of Education a copy of the materials sent to the specialty organization and additional materials to meet the requirements of 5.0.

1.14.2 Programs being reviewed by the Department of Education under the 1989 NASDTEC Standards shall submit to the Department of Education materials addressing the appropriate standards, and additional materials to meet the requirements set out in 5.0.

1.15 In general, Approved Programs of colleges and universities in Delaware do not have to meet the specific course count criteria for licensure; however, the elements of those courses counted for licensure purposes must be found within the approved Program. For example, if all of the elements of a science safety course are embedded in a science methods course, then two courses might be unnecessary. But, if a particular requirement is so glaringly absent, then a Program may be required to adopt a course to meet the criteria.

1.16 The review and revision of these regulations shall be accomplished with the advice of the teacher education Programs of Delaware colleges and universities, and with that of other interested parties.

## **2.0 Reviews Pursuant to NASDTEC Standards Only**

2.1 Institutions of higher education not seeking NCATE initial or continuing accreditation shall be reviewed under the Standards for State Approval of Teacher Education of the National Association of State Directors of Teacher Education, 1989 Revised Edition, the criteria for licensure of the State Department of Education, and the applicable regulations.

2.2 At least one year before the impending review, the Department of Education will contact the Institution. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution with the Department of Education about the administration of the process of review. The administrator shall meet or have a telephone conference with the liaison to establish the dates of the visit of the state team and the areas to be reviewed. The decisions made shall be communicated by the administrator and the liaison to all Programs. This process shall be complete by nine months prior to the review dates.

2.3 State Teams shall consist of five to seven members, one of whom shall be the chair, who shall be selected, in accordance with 6.0, at least six months prior to the review. Substitute members may be selected closer to the time of the review, if those initially selected are unable to serve.

2.4 The Institution shall prepare an Institutional Report which addresses the appropriate NASDTEC Standards, these regulations, where applicable, and the licensure criteria of the State Board of Education in addition to NASDTEC and or NCATE Standards.

2.4.1 The State Board licensure criteria includes Primary (K to 4), Middle Level (5 to 8), Special Education Elementary, Special Education and Secondary Block Requirements

2.4.2 Seven copies of the Institutional Report, and of all applicable catalogs, shall be submitted at least three months prior to the visit of the state team.

2.5 Each Program for which initial or continued approval is sought shall prepare a portfolio to demonstrate how NASDTEC Standards for that Program are being met. The portfolios shall meet the requirements of 5.0. Portfolios shall be submitted with the Institutional Report.

2.6 Portfolios for each Program shall be reviewed by appropriate Program portfolio reviewers of Department of

Education and their reviews on the content and quality of each shall be submitted to the state team at least one month prior to the visit of the state team. Any conflict of interest of a Department of Education reviewer shall be disclosed on the review. If any portfolio is deemed inadequate, the administrator at his/her discretion may contact the Institution to supplement the submission or may return the portfolio to the Institution.

2.7 During the team visit, the state team will verify the accuracy of the portfolios, consider the review of the Department of Education, and produce a draft written report on the Program.

2.8 The finalized report of the state team member on the Program will be due to the administrator or the chair of the team, whomever is designated, three weeks after the last day of the visit.

2.9 Within 10 weeks of the last day of the visit, the administrator or the chair of the team, whomever is designated, will submit the final draft of the report to the Institution for the correction of factual errors only. The Institution shall return the final draft to the administrator, with factual errors and suggested corrections noted, within two weeks of its receipt.

### **3.0 Reviews under NCATE Standards, Procedures & Policies for the Accreditation of Professional Education Units:**

3.1 Institutions shall submit letters of intent to seek accreditation to NCATE approximately 20 months before the scheduled visit. Statements of how Nacre's preconditions are met must be submitted before on site reviews can be scheduled. Portfolios to be submitted to specialty organizations must be submitted to NCATE at least 18 months before the on site reviews.

3.2 At least one year before the impending review, Department of Education will contact the Institution. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution with the Department of Education about the administration of the process of review. The administrator shall meet or have a telephone conference with the liaison in regard to the dates of review and the areas to be reviewed. The decisions made shall be communicated by the administrator and the liaison to all Programs. This process shall be complete by ten months prior to the review dates.

3.3 State teams, and chairs, shall be selected in accordance with NCATE Partnership Agreement Guidelines, and notice given to the Institution at least six months prior to the site review. Substitute members may be selected closer to the time of the review, if those initially selected are unable to serve the NCATE and Delaware Partnership Agreement.

3.4 State team members and Department of Education subject area portfolio reviewers shall have participated in a training session on NCATE standards and procedures and state expectations (including NASDTEC Standards, where applicable) that is conducted or jointly developed by staff of NCATE and the State.

3.5 State team members shall be selected as follows:

3.5.1 Two members of the Department of Education, one of whom shall be the Administrator of Programs for Institutions of Higher Education, if the administrator has no conflicts as listed in 6.0.

3.5.2 Two to three other members, one of whom shall be a teacher, K to 12, and one of whom shall have experience in higher education or education administration.

3.6 The state team members shall be responsible for the following:

3.6.1 To meet with the NCATE Board of Examiners' (BOE) Team, and to assist in the informal deliberations of that group in accordance with NCATE requirements.

3.6.2 To review the reports of the specialty organizations (SOS) on those Programs covered by NCATE Standards, to verify the accuracy of the reports and the conclusions reached by the NSO's, and to submit a report making recommendations to the State Board on the decisions of the NCATE NSOs. To make recommendations including a description of how the review was verified; whether the conclusions of the NSOs are verified, verified with exceptions or substantially in error, and, whether the Program is recommended for approval, approval with exceptions, approval under NASDTEC Standards despite the conclusion of the NCATE SO, or disapproval.

3.6.3 To review the reviews by the Department of Education Program portfolio reviewers, to visit the Programs to verify the accuracy of the conclusions reached by the Department of Education Program portfolio reviewers, and to prepare a report and make recommendations (see 3.6.2 for recommendation levels) to the State Board on each Program covered by NASDTEC Standards which is reviewed by the state team member.

3.7 The report and the accreditation decision of the NCATE Unit Accreditation Board (UAB) will be used as part of the available data in determining whether the State will approve the university or college unit to operate teacher education Programs to be certified by the State Board of Education.

3.8 In addition to individual Program recommendations, the state team members shall make a

recommendation on whether or not the State Board should authorize the university or college to operate teacher education Programs.

3.9 There are two separate procedures for the submission of portfolios to the Department of Education, depending upon whether the Program is required to send a portfolio to an NCATE specialty organization or not.

3.9.1 Programs sending portfolios to NCATE specialty organizations shall prepare their basic portfolio to meet the requirements of those organizations. A copy of whatever is sent to the specialty organization shall be sent to the state team administrator, along with whatever else is required to meet the requirements in 5.0 shall be submitted to the Department of Education at least six months prior to the visit of the state team.

3.9.2 Each Program which is not subject to review by a NCATE national specialty organization shall demonstrate how the NASDTEC Standards for that Program, and the licensure criteria of the State Board of Education in addition to NASDTEC and NCATE Standard are being met. The portfolios shall meet the requirement in 5.0. Portfolios shall be submitted at least six months prior to the visit of the state team.

3.10 Portfolios for each Program shall be reviewed by appropriate Program portfolio reviewers of the Department of Education, and their reviews on the content and quality of each shall be submitted to the state team at least three months prior to the visit of the state team. Any conflict of interest of a Department of Education reviewer shall be disclosed on the review.

3.11 In general, Approved Programs of colleges and universities in Delaware do not have to meet the specific course count criteria for licensure; however, the elements of those courses counted for licensure purposes must be found within the Approved Program. Thus, if the elements of one course are embedded within another, portfolios submitted to the state team administrator shall demonstrate how that is achieved and that teacher education students do incorporate the embedded learning in their performance.

#### **4.0 Programs that do not pass NCATE or NASDTEC review**

4.1 Institutions that do not receive NCATE unit accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the administrator and the liaison in which to submit additional materials which demonstrate how the Institution meets the NASDTEC Organization and Administration Standards. Such Programs will only be eligible for a grant of provisional approval for two years; renewal after that time would be contingent upon a full site review.

4.2 Individual Programs submitted to NCATE specialty organizations that do not receive Program approval from those organizations, and which have exhausted or decided not to use the NCATE rejoinder process, have up to 10 working days after the last day of the site review to supplement portfolios, if needed, to demonstrate how they meet the NASDTEC standards.

4.3 Individual Programs that do not meet NASDTEC Standards at the full approval level, will be given either provisional approval or be disapproved to operate. All Programs given provisional approval shall:

4.3.1 Report annually to the administrator on the progress made on those standards that were not met.

4.3.2 Undergo portfolio submission and site review within 2 or 3 years, as determined by the State Board.

4.4 Institutions that do not receive full or provisional approval through review pursuant to NASDTEC, will not be permitted to operate Programs of teacher education in Delaware.

#### **5.0 Delaware Requirements for Portfolios**

5.1 Portfolios submitted for Program review shall contain the following elements:

5.1.1 A completed Delaware Portfolio Cover Sheet on the Program and an explanation of the following elements of the Program(s): conceptual framework, philosophy for its preparation, goals and objectives, and relationship of the Program(s) to the mission of the university or college.

5.1.2 Student course(s) of studies, with all required courses clearly marked.

5.1.3 Descriptions of all field experiences, student teaching, internships and practica. include the amount of time and describe the each experience, its intent and the type and amount of supervision involved. Documentation will be reviewed at site visit.

5.1.4 Descriptions of where the Program is located in the professional unit and its interrelationships with other Programs in the unit and the university or college.

5.1.5 List of faculty with descriptions of their primary assignments within the Program, including courses taught. Provide rank, tenure status, teaching experience and responsibilities in the unit and in the university or

college. Do not include vitae, but have current vitae available for review, if needed, at the time of the visit.

5.1.6 Number of graduates from the Program(s), by year, for the last three years.

5.1.7 Syllabi for all courses if applicable, or submitted to NCAT.

5.1.8 Descriptions of the materials, media and resources available for the Program and how technology is integrated into the curriculum.

5.1.9 Requirements for entrance into the Program and for progression between levels, if any.

5.2 NCATE Specialty Organization and NASDTEC response document reference may be made to them in providing the information requested. Those Programs required to make response to the 1989 NASDTEC Standards, should do so by providing Sections 3.1, 3.2, 3.3 and 3.4; for an undergraduate Program; Sections 3.3, 3.4 and 4.1 for an entry level graduate Program; or 4.1, and 4.3 (where applicable), for non entry level Programs. The applicable Section 3.5.; or if a non entry level graduate Program, 4.

5.3 Performance exemplars that demonstrate student learning in the Program and the responses to the Standards for these requirements, including, for example: student portfolios, lesson plans developed by students, videos of student performance, compilations of research by students, assessments developed by students, resource sources developed by students, student log and instructor designed assessments. Exemplars presented may not consist of instructor designed assessments only.

5.4 Unless otherwise authorized by the Administrator of Programs for Institutions of Higher Education, all portfolios shall be submitted in expandable folders or binders, with a table of contents and numbered tab marked sections identifying the contents. Portfolios shall note how and where information on and performance exemplars of the criteria set out below are included in each Program portfolio. The portfolio shall also contain a listing of resource references. Portfolios shall reflect the Program as it is being delivered at the time of the site review. If substantial changes will be made between the time of the submission of the portfolio and the site review, those proposed changes shall be described in the portfolio.

5.5 Portfolios reviewed by Department of Education Program portfolio reviewers will be considered according to the criteria.

5.5.1 Portfolios shall demonstrate that the Program under review meets the criteria for licensure, where applicable. Institutions may meet this requirement in a variety of ways.

5.5.2 Portfolios shall demonstrate that the Program includes a sequence of graduated clinical experiences, such as supervised practica, internships, student teaching, that is incremental and occurs in a variety of settings and grade levels, including the areas of specialization, and that is focused upon Program objectives. Records of student participation shall be presented.

5.5.3 Portfolios shall demonstrate that students are taught the methodology of and have had clinical practice in the development and use of multiple types of assessments.

5.5.4 Portfolios shall demonstrate that methodologies on the use of technology in the classroom and other tools of inquiry are provided to students, and that students are provided clinical experiences which make it possible for them to integrate this learning into their instruction.

5.5.5 Portfolios shall demonstrate that strategies for effective teaching are suffused throughout the Program, and that students are taught specific methodology on teaching diverse learners, including exceptionalities and multicultural studies; classroom management; individual behavior management; and teacher expectations; and are given supervised field experiences which make it possible for them to integrate this learning into their instruction.

5.5.6 Portfolios shall specifically indicate how students receive methodology in teaching reading in the content area(s) of the student's specialization, and are able to integrate this learning into their instruction.

5.5.7 Portfolios shall demonstrate that, throughout the Program, students engage in reflection, particularly on their choices and actions for planning for instruction, assessment of teaching and learning, and teaching strategies. The portfolio should show how students grow over time as a result of the reflection.

5.5.8 Portfolios shall indicate how students learn about pupil growth and development and their relationship to teaching and learning, and demonstrate that students use age appropriate learning experiences.

## **6.0 Selection and Conduct of State Team Members**

6.1 Conflict of Interest: State team members shall not participate on a team if they have a close, active association with the Institution to be visited. A close, active association will be presumed where:

6.1.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution.

6.1.2 The member has children or other close relatives in attendance at the Institution, and those

persons are matriculated into the education Programs being reviewed.

~~6.1.3 The member has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years.~~

~~6.1.4 The member has ever been denied tenure by or forced to leave a position at the Institution.~~

~~6.1.5 The member currently serves on, or has been nominated to, any advisory group at the Institution.~~

~~6.1.6 The member maintains any current close personal or professional relationship with a person at the Institution.~~

~~6.1.7 The member is an employee of another Institution in the State with a teacher education Program.~~

~~6.2 Evaluation: The performance of team members will be evaluated, and team members will not be used when past performance is deemed inadequate.~~

~~6.3 Team members shall refrain from publicly criticizing Institutional personnel participating in the Program approval process. The Department of Education's evaluation system will provide a vehicle for receiving feedback to the Institution about the performance of their personnel.~~

~~6.4 Confidentiality:~~

~~6.4.1 All elements of the Program approval process shall be treated in a confidential and professional manner, including the contents of the Institutional Report, questions and answers raised during the visit, team deliberations and analysis, team decisions and the team report. The final report shall be made public.~~

~~6.4.2 Information acquired from the Institution during the Program approval process may not be used for matter other than Program approval without the permission of the Institution.~~

~~6.4.3 The documents from the Institution during the Program approval process are the property of the Institution, and should be returned to them at the end of the process.~~

~~6.4.4 Two archival copies of the Institutional Report and related documents will be maintained by the Department of Education.~~

~~6.5 The Department of Education personal subject area personnel shall not serve on a state team if they have been a Program portfolio reviewer within the previous five years for the same Program area they are asked to site visit as a part of the state team.~~

~~6.6 All persons serving on a state team shall receive training on NCATE Standards and NASDTEC Standards.~~

**7.0 Selection and Conduct of Department of Education Portfolio Reviewers**

~~7.1 Conflict of Interest, Department of Education Program portfolio reviewers shall disclose if they have a close, active association with the Institution from which the portfolio they are to review comes. A close, active association will be presumed where:~~

~~7.1.1 The reviewer is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution.~~

~~7.1.2 The reviewer has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed.~~

~~7.1.3 The reviewer has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years.~~

~~7.1.4 The reviewer has ever been denied tenure by or forced to leave a position at the Institution.~~

~~7.1.5 The reviewer currently serves on, or has been nominated to, any advisory group at the Institution.~~

~~7.1.6 The reviewer maintains any current close personal or professional relationship with a person at the Institution.~~

~~7.1.7 The reviewer is an employee of another Institution in the State with a teacher education Program.~~

~~7.2 Department of Education Program portfolio reviewers shall refrain from publicly criticizing the Program approval process or the portfolio review materials submitted to them for review. The State's system of review will provide a vehicle for giving feedback to the Institution about the portfolio.~~

~~7.3 Confidentiality:~~

~~7.3.1 All elements of the Program approval process must be treated in a confidential and professional manner, including the contents of any portfolio reviewed. The final report to the State Board of Education shall be public.~~

~~7.3.2 Information acquired from the Institution during portfolio review may not be used for matter other than Program approval without the permission of the Institution.~~

~~7.3.3 The documents from the Institution during the portfolio review are the property of the Institution, and should be returned to them at the end of the process.~~

~~7.3.4 Archival copies of the portfolio review documents will be maintained by the Department of Education.~~

~~7.4 All persons serving as the Department of Education Program portfolio reviewers shall receive training on NCATE Standards and NASDTEC Standards.~~

~~7.5 Department of Education Program portfolio reviewers must receive clear notice of deadlines to be met. Meeting those deadlines is essential for the NCATE process to work, and subject area reviewers shall consider the meeting of deadlines for the review of portfolios assigned to them as the highest priority.~~

## **8.0 Conduct of Institutions**

~~8.1 The Institution shall facilitate a thorough and objective appraisal of its professional education Programs by the visiting team and Program reviewers.~~

~~8.2 The Institution may refuse the selection of a visiting state team member only if a likely potential conflict of interest can be demonstrated.~~

~~8.2.1 Notice of the refusal of a team member shall be given within 30 days of the notice to the Institution of the composition of the team;~~

~~8.2.2 The administrator shall make a good faith effort to find a trained substitute for the rejected member from those trained persons located in state.~~

~~8.2.3 In the event no available, trained substitute can be located, the administrator shall find one from out of state.~~

~~8.2.4 All transportation, hotel and food costs (on a par with those incurred by the BOE Team) of such a substitute, coming from out of state, or in state from a distance greater than sixty (60) miles, shall be borne by the Institution making the refusal.~~

~~8.3 Institutional personnel shall refrain from publicly criticizing individuals participating in the Program approval process. The performance of state team members will be evaluated by Institutional personnel, and this information used in the determination of whether they will be selected to serve on subsequent state teams. The performance of Institutions will be evaluated by State team members, and this information shall be returned to the Institutions to assist in the revision of their procedures.~~

~~8.4 Institutions are encouraged to report perceived inadequacies of the state standards or procedures to visiting team members (particularly to the administrator) during the visit, rather than waiting for the evaluation instrument.~~

## **9.0 Training**

### **9.1 General Regulation**

~~9.1.1 All persons participating in NASDTEC and NCATE reviews of Programs of teacher education in Delaware Institutions of higher education shall receive training in the background of, rationale for and procedure of the review process, prior to participating in any review, paper or on-site.~~

~~9.1.2 The Department of Education shall hold training sessions in order to have a sufficient pool of trained team members and Program portfolio reviewers available to serve.~~

~~9.2 State team members shall receive training in, at least, the following areas prior participating in any review; NCATE policy and procedure, NASDTEC policy and procedure, state standards and criteria, procedure for folio review, procedure for site visits, completion of team report, reimbursement of expenses and evaluation of the Institution and team members.~~

~~9.2.1 Persons taking part in state team member training shall be reimbursed for expenses in accordance with the Department of Education's guidelines. Persons coming from out of state can also be reimbursed for hotel accommodations in accordance with the Department's guidelines.~~

~~9.3 Department of Education Program portfolio reviewers shall receive training in, at least, the following areas prior participating in any review; NCATE policy and procedure, NASDTEC policy and procedure, state standards and criteria, procedure for folio review, completion of portfolio report and reimbursement of expenses for substitutes.~~

~~9.3.1 Department of Education staff will be responsible for obtaining additional or substitute Program portfolio reviewers for the areas for which they are responsible if that area has multiple Programs to be reviewed or if~~

the subject area Associate or Specialist is unable to participate in the folio review.

9.3.1.1 Before any request is made of a person outside of the Department of Education to participate in folio review, permission must be received from the Administrator for Postsecondary Program Approval. Substitutes suggested will be scrutinized carefully, for the necessary expertise and potential conflicts.

9.3.1.2 Substitutes shall be selected prior to the training process to ensure that the substitute receives the required training. No untrained persons will participate in the process.

## 10.0 Format of the NCATE Joint Report

10.1 NCATE Board of Examiners' portion of the report.

10.1.1 The NCATE Board of Examiners team shall report on the design of Professional Education Standards, Candidate Standards, Faculty Standards and Governance and Resource Standards.

10.1.2 The NCATE portion of the joint report shall consist of the following:

10.1.2.1 A summary of the Board of Examiners team's decision for each standard at the initial teacher preparation or advanced level.

10.1.2.2 Description of decision for each standard at the initial teacher preparation and advanced levels.

10.1.2.3 Exemplary practices of the professional education unit (if applicable).

10.1.2.4 List of individual interviewed and sources of evidence.

10.1.2.5 Addenda (if needed).

10.2 The state team's portion of the report

10.2.1 The state team shall report on the individual Programs at the initial teacher preparation or advanced level;

10.2.2 The state team portion of the report shall consist of the following:

10.2.2.1 A summary of the findings of the state team, with an emphasis on commonalities between the findings on the individual Programs, and on identifying those Programs that have exemplary practices or show multiple weaknesses.

10.2.2.2 Description of decision for each Program at the initial teacher preparation and advanced levels.

10.2.2.3 List of individual interviewed and primary sources of evidence for the decisions made on each Program.

10.2.2.4 Team recommendations for each Program.

10.2.3 The state team will also submit a recommendation on whether the Institution, and each individual Program, should receive approval to operate in Delaware and under the NASDTEC Interstate Reciprocity Agreement.

## 11.0 Rejoinder Process

11.1 Within thirty (30) days after the state team visit, the team chair will prepare a report of the team visit and make a recommendation on each Program at the Institution.

11.1.1 Two copies will be sent to the Institution, one to the Institution's president, and the other to the Institution's liaison for the review process.

11.1.2 The Institution will be asked for reactions to the accuracy of the information in the Report of the Team Visit. The Institution has fifteen (15) days to respond.

11.2 Following the receipt of the NCATE Institutional Report, if unit accreditation is granted, the administrator shall schedule the submission of the Joint Report, and the recommendations of the state team, to the State Board. A copy of the Joint Report and the recommendations of the state team, and notice of the State Board will be sent to the Institution by certified or express mail or through a private mail and parcel delivery service.

11.3 Following the receipt of the NCATE Institutional Report, if unit accreditation is not granted, the Institution will have a period of time within which to submit additional materials, in accordance with 11.1.2, prior to the presentation to the State Board of the Joint Report, the report of the subsequent NASDTEC review, and the State Team recommendations. Copies of the report of the NASDTEC review, the Joint Report and the recommendations of the state team, and notice of the State Board meeting will be sent to the Institution by certified or express mail or through a private mail and parcel delivery service.

11.4 The Institution may rejoinder any of the recommendations of the state team, by a letter from the Institution's president (or the president's designee) notifying the Secretary of Education in writing of their intent to do so,

accompanied by a short statement listing the recommendations at issue, and why they are contested. The letter must be received in the Secretary of Education's Office within ten (10) days of the delivery of the reports noted in paragraphs 2 and 3 of this Part.

~~11.5 The Secretary of Education shall schedule the recommendation, and if necessary a hearing on the rejoinder, before the State Board at a regularly scheduled meeting.~~

~~11.6 Written statements of position or legal memoranda or briefs may be submitted by the Institution or the state team. They must be received by the Secretary of Education's Office not less than ten (10) days prior to the date scheduled for the presentation of the recommendations to the State Board.~~

~~11.7 There will be no oral testimony before the State Board of Education. If the Institution wishes to make an oral summary of their position before the Board, they must file a request to do so not less than ten (10) days prior to the date scheduled for the presentation. The Institution's oral summary will be limited to 15 minutes; the state team will have 15 minutes to respond.~~

~~11.8 The Board, after considering the evidence presented and the arguments made by the parties to the controversy, will make a decision and so inform the parties in writing of that decision. The State Board of Education's decision is final.~~

## **290 Approval of Educator Preparation Programs**

### **1.0 Definitions**

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

“**Accreditation**” means the decision rendered by NCATE when an institution's professional education unit meets NCATE's standards and requirements.

“**Administrator**” means Department of Education Associate charged with oversight of Program Approval for college and university educator preparation Programs.

“**Associate Degree**” means a two (2) year degree conferred by a regionally accredited Institution of higher education or by a distance education Institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

“**Concurrent Agreement**” means the process where an NCATE review and a review by the Delaware Department of Education occur in a concurrent manner.

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

“**Department Approval**” means the process by which a specific professional education Program is recognized by the State Department of Education as meeting state standards for the content and operation of such Programs.

“**Department of Education Program Approval Regulations**” means the regulations set forth herein.

“**Educator**” means a person licensed and certified by the State under 14 Del.C., Ch 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board but does not include substitute teachers.

“**Higher Education Degree Advanced Level**” means post baccalaureate degree Programs for the advanced preparation of teachers, and the initial or advanced preparation of professional school personnel. Programs at the advanced level lead to a master's, specialist, or doctoral degree, or they may culminate in non degree licensure at the graduate level.

“**Higher Education Degree Basic (Initial) Level**” means programs leading to the initial preparation of teachers, commonly leading to a baccalaureate degree, a master of arts in teaching, or other programs designed to prepare teachers for initial licensure.

“**Institution**” means the college or university offering baccalaureate and post baccalaureate degree teacher preparation programs.

“**Institutional Report**” means a report submitted to NCATE as part of the review process that provides the institutional and unit context, a description of the unit's conceptual framework, and evidence that the unit is meeting the NCATE unit standards.

“**National Recognition**” means approval of a program that has met the standards of a specialized professional association that is a constituent member of NCATE.

“**NASDTEC**” means The National Association of State Directors of Teacher Education and Certification. The

organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

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

**“Professional Education Unit”** means the school, college, department or other administrative body within an Institution of higher learning that is primarily responsible for the preparation of teachers and other professional education personnel.

**“Program(s)”** means the sequence of courses and experiences required by a college or university for the preparation of professional education candidates to teach a specific subject or academic area, to provide professional education services, or to administer schools.

**“Proposal for Program Approval for Education Preparation Programs Which Do Not Have Specialized Professional Association (SPA) Approval”** means the formal proposal that the Department requires higher education institutions to complete and submit in order to seek approval for teacher education programs in a Professional Education Unit for which there is no national Specialized Professional Association (SPA) or for which the institution has not received approval from the SPA.

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

**“Specialized Professional Association (SPA)”** means national bodies such as the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) and the International Reading Association (IRA) whose program review standards have been approved by NCATE.

**“State Program Proposal Review Team”** means the team assembled pursuant to section 4.4 of this regulation.

**“State Review Team”** means the team assembled by the Department of Education pursuant to section 3.3 of this regulation.

## **2.0 Prior Approval from the Department Required to Offer Programs**

Pursuant to 14 Del.C. §122(b)(22), no individual, public or private educational association, corporation or Institution, including any Institution of post secondary education, shall offer a Program for the training of educators to be licensed in this State without first having procured the assent of the Department for the offering of such a Program. In order to be approved by the Department, Programs of Educator Preparation in Delaware Institutions of higher education that lead to educator licensure and certification shall meet State and, where applicable, national standards appropriate to the Professional Education Unit and the Professional Education Unit's individual Programs. All Professional Education Units and their Programs shall be reviewed through a fair and uniform application of standards.

2.1 The Department shall approve an Institution's Educator Preparation Programs. Approval is based on an institutional self study report and an on site visit by teams, one trained and selected by NCATE and one with Department representation. Institutions seeking approval of Educator Preparation Programs in the state shall meet the Professional Education Unit Standards established by NCATE and the appropriate Program standards established by the Specialized Professional Association. All Programs shall also comply with the state's regulations for Educator licensure and certification, the Delaware Teacher or Administrator Standards, and other applicable regulations and standards as are established by the Department or the Professional Standards Board, in cooperation and consultation with the Department and with the concurrence of the State Board of Education. Units having been accredited by NCATE and Programs receiving national recognition from a SPA will have met the above State regulations and standards.

## **3.0 NCATE State Partnership Review**

National Council for Accreditation of Teacher Education (NCATE) Standards, Procedures and Policies for the Accreditation of Professional Education Units and Programs.

3.1 The Department shall enter into agreements with the higher education governing boards and their Institutions for the purpose of coordination of review procedures on a five (5) year cycle for Institutions receiving their initial accreditation from NCATE and on a seven (7) year cycle for Institutions seeking continuing accreditation. As established by NCATE, such agreements shall include, but are not limited to, Program review timetables; format and content of Institutional reports; selection, number, and role of review team members; and the reporting of Program results.

3.2 Accreditation Request

3.2.1 Institutions shall submit to NCATE the forms required of NCATE to seek accreditation to NCATE twenty four (24) months before the scheduled visit.

3.2.2 Program reports submitted to Specialized Professional Associations shall follow the NCATE requirements and shall be submitted to NCATE at least one (1) year before the on site reviews.

### 3.3 The State Review Team

3.3.1 The state review team assembled by the Department to work concurrently with the NCATE review team shall have up to three (3) members designated by the Department and the Department shall agree to comply with the schedule established by NCATE in the review and on site visits of NCATE accredited Institutions.

3.3.1.1 State Review Team members shall be selected in accordance with NCATE Partnership Agreement Guidelines. A list of members shall be given to the Institution at least six (6) months prior to the site review. Substitute members may be selected and the Institution notified of the substitute members closer to the time of the review, if those initially selected are unable to serve.

3.3.1.2 State Review Team members shall be selected from the following:

3.3.1.2.1 Employees of the Department of Education, one of whom shall be the Administrator.

3.3.1.2.2 Persons who have experience in higher education or education administration.

3.3.1.3 State Review Team member(s) shall attend a training session on NCATE standards and procedures and State expectations paid for by the Department and conducted by the staff of NCATE.

3.3.1.4 The State Review Team members shall be responsible for the following:

3.3.1.4.1 Meeting with the NCATE review team and participating in informal deliberations with that group in accordance with NCATE requirements:

3.3.1.4.2 Reviewing the reports of the SPAs on those Programs covered by SPA standards, to understand the conclusions reached by the SPA:

3.3.1.4.3 Reporting to the Secretary the decisions of the SPA including a description of the conclusions of the SPA and whether the Program was recommended for national recognition, national recognition with conditions or was not recognized by the SPA.

3.3.2 Conflict of Interest: Team members from the State shall not participate on a team if they have a close, active association with the Institution to be visited. A close, active association shall be presumed where:

3.3.2.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution:

3.3.2.2 The member has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed:

3.3.2.3 The member has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years:

3.3.2.4 The member has ever been denied tenure by or forced to leave a position at the Institution:

3.3.2.5 The member currently serves on, or has been nominated to, any advisory group at the Institution:

3.3.2.6 The member maintains any current close personal or professional relationship with a person at the Institution; or

3.3.2.7 The member is an employee of another Institution in the state with a teacher education Program.

### 3.4 Final Report

3.4.1 Institutions, Professional Education Units and Programs approved through NCATE accreditation and SPA recognition shall comply with NCATE self study requirements. Copies of any reports to NCATE shall also be submitted to the Administrator.

3.4.2 For Programs being reviewed by a SPA, Professional Education Units shall submit to the Administrator a copy of the materials sent to the Specialty Professional Association.

3.4.3 A final report on the reviews shall be forwarded to the Secretary for action. The report shall make recommendations for full approval, provisional approval, or disapproval of the Professional Education Unit and of each of the individual Programs. Units accredited by NCATE and Programs recognized by SPAs shall receive Department Approval.

3.4.3.1 Copies of the final report shall be sent to the chief executive officer of the Institution

and to the leader of the Professional Education Unit.

3.4.4 The report, and the accreditation decision of the NCATE Unit Accreditation Board, and the recognition decisions of the SPAs shall be used to determine whether the Department will approve the Educator Preparation Programs.

3.4.5 In addition to individual Program recommendations, a recommendation on whether or not the Department should authorize the university or college to operate Educator Preparation Programs shall also be included.

3.4.6 Two copies of the final report and related documents shall be maintained by the Department and submitted to the State Archives as provided by the retention schedule for the State Archives.

#### **4.0 Procedures for Teacher Education Programs in a Professional Education Unit Seeking Approval for Programs for Which There is no Specialized Professional Association (SPA) or for Which the Institution has Not Received Approval from the SPA.**

4.1 Higher education institutions seeking approval for Educator Preparation Programs in a Professional Education Unit for which there is no Specialized Professional Association (SPA) or for which the institution has not received national recognition from the SPA shall complete the Department's Proposal for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval and shall submit the Proposal to the Department at least six (6) months before the on site reviews.

4.1.1 In the case where a Program has been submitted to a SPA and subsequently was not granted national recognition by the SPA, the Professional Education Unit shall submit the Department's Proposal for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval within two (2) months of notification that the Program has not been nationally recognized.

4.1.2 In the case where a Program has been submitted to a SPA and no decision has been made about national recognition by the SPA, the Professional Education Unit shall submit the same Program report submitted to the SPA to the Department of Education.

4.2 Time lines related to the submission of data and other documentation of the Institution's compliance with Program approval criteria, the submission of Program reports, the role of Department review members, and the procedures for the reporting of Program review results shall follow NCATE guidelines.

4.3 At least one year before the impending review, the Institution shall contact the Department. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution under this Non SPA State Review. The Administrator shall meet with the liaison to establish the review process and to report the potential Programs to be reviewed. The decisions made shall be communicated by the Administrator and the liaison to all of the Programs. This process shall be completed nine months prior to the review dates.

4.4 Selection, Training and Conduct of the State Program Proposal Review Team Members for the Non SPA State Review

4.4.1 State Program Proposal Review Teams shall consist of at least three (3) members including the Administrator or designee, one of whom shall be the chair, who shall be selected at least six months prior to the review. The Institution shall be notified as to the members chosen for the review.

4.4.1.1 If those initially selected are unable to serve, substitute members may be selected and the Institution notified of the substitute members closer to the time of the review.

4.4.2 Conflict of Interest is the same as defined in 3.3.2

4.4.3 Training of State Program Proposal Review Team Members

4.4.3.1 State Program Proposal Review Team members shall receive training at the Department in the following areas prior to participating in any review: the purpose of the self study, the State Standards and criteria, the procedure for review of Program proposals, timelines for proposal review, the completion of team reports, and the reimbursement of expenses. Information about the NCATE accreditation process and the SPA process for national recognition, including the evaluation of the Professional Evaluation Unit and the background of, rationale for, and the review procedures of NCATE and the SPAs will also be part of the training.

4.4.4 Persons taking part in State Program Proposal Review Team member training shall be reimbursed for expenses in accordance with the Department's guidelines.

4.5 The Program shall prepare the Proposal which shows how it meets the Department of Education Program Approval Regulations and the Delaware Licensure and Certification Regulations.

4.5.1 Five (5) copies of the Proposal and all additional documentation shall be submitted at least six (6) months prior to the visit of the State Review Team.

4.5.2 Proposals and additional materials requested for each Program shall be reviewed by appropriate Program Proposal reviewers at the Department and the review on the content and quality of each, where possible, shall be made available to the State Program Proposal Review Team at least three (3) months prior to the on-site visit of the NCATE and State Teams. In the case of a Program submitted to a SPA in accordance with NCATE guidelines, where the SPA has not nationally recognized the Program, the Program proposal reviewers shall make their Program review available for the State Review Team at least one (1) month prior to the on-site visit. If any aspect of the Proposal is deemed inadequate, the Administrator may contact the Institution to supplement the submission or may return the Proposal to the Program.

4.5.3 The State Program Proposal Review Team shall verify the accuracy of the Proposal, consider the Department review and write a draft report on the Program. The report shall make recommendations for full approval, provisional approval, or disapproval of the Program.

4.6 The final report of the State Program Proposal Review Team members on the Program(s) shall be due to the Administrator or the chair of the team three (3) weeks after the last day of the visit.

4.7 Within ten (10) weeks of the last day of the visit, the Administrator or the chair of the State Program Proposal Review Team shall submit the final draft of the report to the Program for the correction of factual errors only. The Program shall return the final draft to the Administrator with factual errors and suggested corrections noted, within two (2) weeks.

4.8 Professional Education Units shall submit a report for any provisionally approved Programs as requested by the Department. The report shall detail how previous weaknesses, if any, have been addressed.

## **5.0 Provisional Program Approval for New Programs**

5.1 An Institution that has approved educator preparation Programs may request interim provisional Program approval for new education Programs added between regularly scheduled reviews. The following documentation shall be supplied to the administrator:

5.1.1 A description of the Program for which approval is sought and other administrative information:

5.1.2 The curriculum for the Program, including syllabi for any new courses;

5.1.3 Descriptions of the expected outcomes of the Programs and of how those outcomes will be assessed:

5.1.4 Vitae for all faculty delivering the Program; and

5.1.5 Descriptions of materials, media and resources available for the Program, and how technology is integrated into the curriculum or Program.

5.2 An Institution currently operating approved educator preparation Programs may seek approval for a new specialization in a currently operating Program in teaching, specialist services or administrative area provided the documentation submitted contains sufficient justification to warrant the new specialization. The Institution is encouraged to collaborate with the Department during the Program's initial planning. The Institution must identify the Program objectives for the new Program from which the curriculum shall be developed.

5.3 Experimental or innovative Programs that do not meet NCATE standards may be allowed by the Department. Such an allowance may be requested by submitting the material for new Programs, and where the standards are not met, a rationale for the exception(s). Experimental or innovative Programs that are approved by the Department shall be given provisional approval; full approval may not be granted until a full on site review of the Program takes place, or it is recommended and approved by the Secretary.

5.4 Programs or specializations, such as those described in 5.1, 5.2, and 5.3 above, that have received only paper review, without full on site verification, will be granted provisional approval. Full approval may not be granted until a full on site review of the Institution takes place, or is recommended and approved by the Secretary.

## **6.0 Professional Education Units that do not Receive Accreditation by NCATE**

6.1 Professional Education Units that do not receive NCATE accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the Institution and the Administrator in which to submit additional materials which demonstrate how the Institution meets the NCATE Standards and SPA Program Standards. Such Units will only be eligible for provisional approval for three (3) years; renewal after that time will be contingent upon a full site review.

6.2 Programs that do not receive SPA recognition should submit materials to the Department in accordance with the provisions set forth in 4.0.

# PROPOSED REGULATIONS

6.3 Programs that do not meet the NCATE standards, Delaware Teacher or Administrator Standards, or the State's licensure and certification regulations at the full approval level, shall be given either provisional approval or not be approved to operate. All Programs given provisional approval shall:

6.3.1 Report annually to the Administrator on the progress made on those standards that were not met.

6.3.2 Undergo Program proposal review submission and site review within three (3) years from the date of provisional approval.

6.4 Institutions that do not receive full or provisional approval through review pursuant to NCATE Standards or Delaware Program Approval Regulations shall not be permitted to operate licensure Programs in Delaware.

## **7.0 Required Format for the State Report**

The format of the State Report shall follow the format consistent with NCATE procedures and shall include recommendations on whether the Professional Education Unit and each individual Program shall receive approval to operate in Delaware.

## **8.0 Rejoinder Process**

### 8.1 NCATE Review

8.1.1 If the Professional Education Unit accreditation is not granted by NCATE, the Institution may contest any of the recommendations through the NCATE rejoinder process. If a Program is not nationally recognized by a SPA, the Institution may contest any of the recommendations through the SPA rejoinder process. The Department shall accept the decision of NCATE or a SPA when their rejoinder process is followed.

### 8.2 Non SPA State Review

8.2.1 Within thirty (30) days after the State Review Team visit, the team chair shall prepare a report of the team visit, make a recommendations on the Program(s) and send two copies to the Institution, one to the Institution's president, and the other to the Institution's liaison for the review process.

8.2.1.1 The Institution shall respond within fifteen (15) days as to the accuracy of the factual information in the report of the team visit.

8.2.2 Intent to contest the recommendations: A letter shall be sent from the Institution's president or designee notifying the Secretary of the intent to contest the recommendations accompanied by a short statement explaining the rational for contesting the review. The letter must be received in the Office of the Secretary within ten (10) days of the delivery of the reports.

8.2.2.1 The Secretary shall review the materials submitted by the Institution including written statements of position, documents, and comments supporting the claims.

8.2.2.2 The Secretary, after considering the evidence presented and the arguments made by the parties, shall make a decision and so inform the parties in writing of that decision. The decision of the Secretary is final.

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 910

## PUBLIC NOTICE

### 910 General Educational Development (GED) Endorsement

#### **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

910 General Educational Development (GED). The amendments clarify the intent of the regulation and as part of the clarification the title has been changed to Delaware General Educational Development (GED) Endorsement. The number assigned to the regulation remains the same.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the GED testing procedures not the relationship between state standards and student achievement.
2. Will the amended regulation help insure that all students receive an equitable education? The amended regulation addresses the GED testing procedures not equity issues.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the GED testing procedures not health and safety issues.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the GED testing procedures 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 continue to 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 will be no additional cost to the State and to the local school boards of compliance with the amended regulation.

**~~910 General Educational Development (GED)~~**

~~The Delaware General Educational Development (GED) Endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test.~~

**~~1.0 To be Eligible to Take the GED Test an Applicant Shall~~**

- ~~1.1 Be a resident of Delaware or if a resident of another state work in the state for at least one year.~~
- ~~1.2 Have withdrawn from a regular high school program.~~
- ~~1.3 Be 18 years of age or older, or be 16 or 17 years of age and meet the following requirements:~~
  - ~~1.3.1 Be a resident of the State of Delaware.~~
  - ~~1.3.2 Be officially withdrawn from a regular high school program.~~
  - ~~1.3.3 Be at least 16 years of age at the time of application for a waiver.~~
  - ~~1.3.4 Make written application to the Director of Adult Education at the Delaware Department of Education showing good cause for taking the test and designating where the test will be taken.~~
  - ~~1.3.5 Provide verification of withdrawal from high school and a copy of the GED practice scores.~~
- ~~1.4 Pass the Official GED Practice Test with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.~~

**~~2.0 Required Scores~~**

~~An individual shall have a standard score of not less than 410 on each of the five tests with an average~~

~~standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED Endorsement. Forty five days must lapse prior to retesting and instruction is recommended before retesting.~~

~~2-DE-Reg-375 (9/1/98)~~

~~5-DE-Reg-1285 (12/1/04)~~

## **910 Delaware General Educational Development (GED) Endorsement**

The Delaware General Educational Development (GED) Endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test.

### **1.0 For a person 18 years of age or older to be eligible to take the GED Test an applicant shall:**

1.1 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and

1.2 Certify under his or her signature on the GED application form that he or she officially withdrew from a regular high school program; and

1.3 Provide an official copy of the GED practice test indicating the applicant has passed the Official GED Practice Test with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.

### **2.0 For a person 16 or 17 years of age to be eligible to take the GED Test an applicant shall:**

2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and

2.2 Be a resident of the State of Delaware; and

2.3 Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, driver's license or a State of Delaware Identification Card; and

2.4 Provide verification of withdrawal from a regular high school program; and

2.5 Provide a transcript of their school work from their home school; and

2.6 Provide an official copy of the GED practice test indicating the applicant has passed the Official GED Practice Test with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.

### **3.0 Scores Required for the Delaware General Educational Development (GED) Endorsement**

An individual shall have a standard score of not less than 410 on each of the five tests with an average standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED Endorsement.

### **4.0 Retesting**

Forty five days shall lapse prior to retesting and instruction is recommended before retesting.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

### **PUBLIC NOTICE**

#### **Title XXI Delaware Healthy Children State Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42CFR §447.205, and, under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual related to the Delaware Prescription Assistance Program (DPAP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by October 2, 2006.

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

## SUMMARY OF PROPOSED AMENDMENT

### Statutory Authority

- Legal basis of the State Children's Health Insurance Program (SCHIP): Title XXI of the Social Security Act
- The Code of Federal Regulations (CFR) specifically dealing with the SCHIP: Title 42, Part 457
- 16 **Delaware Code**, Section 9909
- House Bill #235, 143rd General Assembly (signed into State law on July 10, 2006)

### Background

The Balanced Budget Act of 1997, enacted on August 5, 1997, established the "State Children's Health Insurance Program" by adding a new Title XXI to the Social Security Act. The purpose of this program is to provide funds to States to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. Delaware's CHIP program called the Delaware Healthy Children Program (DHCP) is authorized under Title 19, Chapter 99, and Section 9905 of the **Delaware Code**.

### Summary of Proposal

This amendment is needed to implement House Bill (HB) #235, 143rd General Assembly, which extends the Delaware Healthy Children Program to include dental health services for children enrolled in the program.

Dental services for this population will mirror Title XIX (Medicaid) EPSDT dental services in amount, duration and scope to help ensure continuity of care.

The proposed amendment to the state plan is subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### DMMA PROPOSED REGULATION #06-33 REVISIONS:

#### Title XXI Delaware Healthy Children Program

- 6.2. The state elects to provide the following forms of coverage to children: (Check all that apply. If an item is checked, describe the coverage with respect to the amount, duration and scope of services covered, as well as any exclusions or limitations).

**(Section 2110(a)) (42 CFR 457.490)**

***The following services marked with an [X] are covered by the Delaware Healthy Children Program either as part of a basic MCO benefit package when medically necessary or as a "wrap-around" service - exceptions/limitations noted:***

#### (Break In Continuity of Sections)

- 6.2.12. **[X]** Durable medical equipment and other medically-related or remedial devices (such as prosthetic devices, implants, eyeglasses, hearing aids, dental devices, and adaptive devices) (Section 2110(a)(12)) ~~*dental devices are not provided as part of the basic benefit or wrap-around services*~~ *dental devices are provided as "wrap-around" services with the same limitations as the Title XIX EPSDT dental program.*

**(Break In Continuity of Sections)**

- 6.2.17. **[X]** Dental services (Section 2110(a)(17)) – included as “wrap-around” services with the same limitations as the Title XIX EPSDT dental program.
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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE****3000 Delaware Prescription Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42CFR §447.205, and, under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual related to the Delaware Prescription Assistance Program (DPAP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by October 2, 2006.

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

**SUMMARY OF PROPOSED AMENDMENT****Statutory Authority**

16 **Delaware Code**, Ch. 30B

Senate Bill #297, 143<sup>rd</sup> General Assembly (signed into State law on July 6, 2006)

**Background**

The 140th General Assembly amended Title 16, **Delaware Code**, by adding Chapter 30B to enact the Delaware Prescription Drug Payment Assistance Program. The purpose of the act is to provide payment assistance for prescription drugs and certain Medicare Part D costs to low-income seniors and individuals with disabilities who are ineligible for, or do not have, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state, or private sources

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services. The Delaware Prescription Assistance Program (DPAP) was implemented January 1, 2000, with benefits beginning January 14, 2000.

**Summary of Proposal**

DSSM §30501: The proposed amendment would implement Senate Bill (SB) #297, which increases the maximum annual benefit under the Delaware Prescription Assistance program to assist eligible individuals in the purchase of prescription drugs and the payment of certain Medicare Part D costs from \$2,500 to \$3,000.

**3000 Delaware Prescription Assistance Program****30500 Benefits**

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription

drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

### **30500.1 Benefits for Individuals with Medicare Part D Coverage**

DPAP will provide payment assistance for Medicare Part D monthly premiums, yearly deductible, those drug costs that fall into the Part D coverage gap, and drugs that are excluded from Medicare Part D.

Medicare Part D coverage will be primary to payment assistance under DPAP.

**9 DE Reg. 774 (11/01/05)**

### **30501 Limitations on Benefits**

Payment assistance to each eligible individual shall not exceed ~~\$2,500.00~~ \$3,000.00 per benefit year. Individuals will receive a notice when 75% of the ~~\$2,500.00~~ \$3,000.00 cap has been expended.

**9 DE Reg. 774 (11/01/05)**

### **30502 Co-payment Requirement**

There is a co-payment of \$5.00 or 25% of the cost of the prescription whichever is greater. The pharmacy will not dispense or provide the prescription until the co-payment is collected.

#### **30502.1 Co-payment Requirement for Individuals with Medicare Part D Coverage**

There is a co-payment of \$5.00 or 25% of the cost of the prescription (whichever is greater) during the Part D deductible and coverage gap and for drugs that are excluded from Part D. DPAP will not provide payment assistance for Medicare Part D co-payments. When the individual receives a prescription drug that is covered under Medicare Part D, the individual is responsible for the Medicare Part D co-payment.

**9 DE Reg. 774 (11/01/05)**

### **30503 Waiver of Co-payment for Good Cause**

At the written request of the individual, the co-pay requirement may be waived for good cause.

Good cause for waiver of the co-payment is:

The individual has experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or significant damage to shelter or the well being of the individual or his immediate family.

The written request must explain the circumstances that led to the request. Verification of the circumstances is required in the form of collateral evidence that may include, but is not limited to, repair bills and police or insurance reports. The DPAP will provide written notification to the individual regarding the good cause decision. If good cause is granted, the co-payments will be waived for the remainder of the fiscal year.

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## **DIVISION OF SOCIAL SERVICES**

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

### **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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by October 2, 2006.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the

results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

## SUMMARY OF PROVISIONS

### Statutory Basis

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996;
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41); and,
- 45 CFR, Part 98, Subpart C, Eligibility for Services.

### Summary of Provisions

DSS is proposing to amend several sections in the Division of Social Services Manual (DSSM) to clarify and update existing Child Care Subsidy Program policy. This regulatory action contains new, updated, revised and clarified policy as summarized below:

1) DSSM 2013.1: This change adds the Child Care Subsidy Program to the list of assistance programs that the Income and Eligibility Verification System (IVES) supports. This change is necessary due to the integration of the child care sub-system into the DCIS II system.

2) DSSM 11002.2, 11002.7, 11003, 11003.7.4, 11003.7.5, 11003.7.6, 11003.8: Existing policy includes education and training as an acceptable need for receiving Income Eligible Child Care. This policy was inconsistently applied due to lack of clarity. The need for Income Eligible Child Care for education and training purposes, other than GED preparation, must be part of a DSS Employment and Training program.

3) DSSM 11003.4, 11003.4.1, 11003.4.2, 11003.4.3, 11003.4.4, 11003.4.5, 11003.4.6, 11003.4.7 (all new) and 11004.2.1: The purpose of the new policy is to apply cooperation requirements with Child Support Enforcement (DCSE) consistently across all DSS programs. Currently all Temporary Assistance for Needy Families (TANF) cases and combined TANF, Food Stamp and Child Care cases are required to cooperate with the DCSE when the family has an absent parent. This new policy now requires all Child Care Subsidy cases to cooperate with the DCSE, when there is an absent parent.

4) DSSM 11003.7.8, 11004.3.1, 11004.7: The purpose of this change is to reduce the inconsistency and streamline the application of the parent fee determination system. DSS is reducing the number of allowable situations that automatically waive the assessment of a parent fee. The automatic waiving of parent fees for individuals that are referred by the Division of Services to Children, Youth and Their Families (DSCYF) is inconsistent with current federal regulations. These regulations require the waiving of parent fees to be determined on a case-by-case basis.

These changes provide consistency with DSS programs and underscore the Division's mission of self-sufficiency.

### DSS PROPOSED REGULATION #06-28

#### REVISIONS:

#### 2013 Verification

In general all categorical eligibility factors must be verified before assistance can be authorized unless policy specific to that factor indicates that verification can be delayed.

When a redetermination is due, the recipient must complete a new DSS application form (Form 100). A redetermination is complete when all eligibility factors are examined and a decision regarding continuing eligibility is reached.

Close the assistance case of a recipient who fails, without good cause, to complete the redetermination review. Likewise, close the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility.

As part of the verification process for continuing eligibility, the person will provide verification that s/he has carried out the elements of the individual Contract of Mutual Responsibility. The penalties for non-cooperation in

developing the Contract and/or following through with the required components of the Contract are also detailed.

Refer to DSSM 2001 for specific information regarding timeframes for returning verifications and noticing requirements.

Recipients are required to verify changes in circumstance within ten (10) days of the report of the change.

## 2013.1 Income and Eligibility Verification Systems (IEVS)

The purpose of the Income and Eligibility Verification Systems is to obtain and verify income information relevant to determining eligibility and benefit amounts in the TANF, FS, Child Care, and Medicaid programs through a series of computer matches and on line interfaces. In IEVS, the Division will obtain:

- Unearned income data from the Internal Revenue Service (IRS).
- RSDI, SSI, pension, self employment earnings, wage data and verification of Social Security Numbers from the Social Security Administration (SSA).
- Wage data and UC data from the Delaware Department of Labor (DOL).
- Licensed motor vehicle ownership data from the Delaware Division of Motor Vehicles (DMV). The address reported to DMV of each person holding a Delaware driver's license is also available through this system.

Information obtained through IEVS will enable the Division to:

- Identify unreported or discrepant income information.
- Discourage new applicants from attempting to receive benefits to which they are not entitled.

Except for IRS information, IEVS data is stored in DCIS and can be viewed by accessing the system (see the DCIS User Guide for instructions). IRS information is not stored in DCIS. It is available in hard copy only and is safeguarded according to IRS regulations.

### (Break in Continuity of Sections)

## 11002 Administration

This section discusses the following administrative policies:

- A. Purpose of Delaware's Child Care Subsidy Program,
- B. Goals,
- C. Services Provided,
- D. Persons Eligible,
- E. Responsibility for the Administration of Delaware's Child Care Subsidy Program,
- F. Legal Authority,
- G. Other Administrative Policies,
- H. Seamless Services, and
- I. Definitions and Explanation of Terms.

### 11002.1 Purpose Of Delaware's Child Care Subsidy Program

The purpose of Delaware's Child Care Subsidy Program is to provide support to Delaware families who need care and who need otherwise cannot pay for all or part of the cost of care.

**9 DE Reg. 572 (10/01/05)**

### 11002.2 Goals

The goal of the Child Care Subsidy Program is to supplement the care and protection that children receive from their parents. This supplemental care is necessary when parents/caretakers must be apart from their children during a portion of a 24-hour day because:

- A. the children's parents/caretakers work,

- B. the children's parents/caretakers must participate in a DSS Employment and Training program and attend school or participate in a training program which leads to employment,
- C. the children or parents have a special need requiring either one of them to be out of the home, or
- D. the children need to be protected from neglect and/or abuse.

Child care provided under these circumstances enables families:

- A. to achieve and maintain independence;
- B. to provide care, protection, health, supervision, social experience and learning opportunities which are essential to a child's growth and development; and
- C. to maintain the bonds of family unity.

**(Break in Continuity of Sections)**

**11002.7 Other Administrative Policies**

~~Child Care~~ Case Managers are to view Child Care Policy as an extension of the DSS Policy Manual. It is part of the whole. Therefore, policies on Administration and Fair Hearings contained in DSSM 1000 and DSSM 5000 equally apply to the Child Care Subsidy Program and the Case Managers who administer it.

Specifically, Case Managers ~~in the Child Care Subsidy Program~~ must be familiar with the following corresponding policies on Administration:

- 1002 - Courteous Treatment of Clients
- 1003 and 1003.1 to .4 - Confidentiality
- 1004 - Records to be Kept in Locked Files
- 1005 and 1005.1 - Case Record Maintenance and Retention
- 1006 and 1006.1 to .7 - Civil Rights and Non-Discrimination
- 1007 and 1007.1 to .6 - Complaint Procedures
- 1008 - Availability of Program Manuals
- 1009 - Procedures for Serving Non-English Speaking Hispanic Clients
- 1010 - Procedures for Serving Hearing Impaired Clients

In addition, ~~Child Care~~ Case Managers must be familiar with the entire section of DSSM 5000, Fair Hearing ~~Procedure Manual~~ Practices and Procedures.

**(Break in Continuity of Sections)**

**11003 Eligibility Requirements**

DSS provides child care services to eligible Delaware families with a child(ren) who resides in the home and who is under the age of 13, or children 13 to under 19 who are physically or mentally incapable of caring for themselves or are active with the Division of Family Services.

Under Title IV, Sections 401 and 402 of the Personal Responsibility and Work Opportunity Act of 1996, the Division is prohibited from using CCDBG and SSBG funds to pay for child care services for most persons who are not U.S. citizens. At State option, the Division may choose to use State only funds to pay for child care services for such persons. Certain aliens are exempt from this restriction for a period of five (5) years from the date of obtaining status as either a refugee, asylee, or one whose deportation is being withheld. In addition, aliens admitted for permanent residence who have worked forty (40) qualifying quarters and aliens and their spouses or unmarried dependent children who are either honorably discharged veterans or on active military duty are exempt from this restriction.

The Division will provide Child Care services for eligible families where there is at least one U.S. citizen or legal alien in the family. If one member of the family is a U.S. citizen or legal alien and they meet both technical and financial eligibility criteria Child Care Services can be provided. The Division will evaluate non-U.S. citizen cases on an

individual basis.

Non-US citizens referred to the Child Care subsidy program through the Division of Family Services, due to a protective need, are eligible to receive services regardless of their citizenship status.

A family needs service when parents/ caretakers are required to be out of the home, or are reasonably unavailable (may be in the home but cannot provide supervision, such as a parent works a third shift, is in the home, but needs to rest), and no one else is available to provide supervision.

- A. Parents/caretakers need service to:
  1. accept employment,
  2. keep employment,
  3. participate in a training component, as part of one of the DSS Employment and Training program, leading to employment,
  4. participate in an education component, as part of one of the DSS Employment and Training programs,
  5. work and the other parent/caretaker or adult household member is chronically ill or incapacitated,
  6. have someone care for the children because of a parent/caretaker special need.
- B. A child(ren) needs service to:
  1. provide for a special need (physical or emotional disabilities, behavior problems, or developmental delays, etc.);
  2. provide protective supervision in order to prevent abuse or neglect.

In addition to having an eligible child and a child care need, certain DSS child care programs require parents/ caretakers to meet income limits. Under certain other child care programs, DSS guarantees child care. These financial requirements along with other technical requirements help determine the parent/caretaker's child care category. Categories relate to the funding sources used by DSS to pay for eChild eCare services. The following sections discuss the technical requirements for child care services based on category and need.

**9 DE Reg. 572 (10/01/05)**

## (Break in Continuity of Sections)

### **11003.4 ~~Reserved~~ Child Support**

As part of the Child Care eligibility process, all applicants must assign to the State of Delaware their rights to receive spousal support for themselves and child support for the dependent children in their care. As part of this process, applicants and recipients must cooperate, unless good cause is established, in:

1. Identifying and locating absent parents;
2. Establishing paternity for dependent children born out of wedlock; and
3. Establishing support payments and/or other properties for the dependent child.

The Division of Child Support Enforcement (DCSE) is the single State agency that is empowered to:

1. Establish paternity of and secure support for children born out of wedlock;
2. Secure support from parents who have abandoned or deserted their children; and
3. Enter cooperative arrangements with appropriate courts and law enforcement officials in order to establish support.

Before approving a Child Care case, DSS will refer applicants to the DCSE to begin the process of securing support payments. While assistance is received, any spousal or child support payments made on behalf of a recipient will be paid to DCSE. Once support has been established DCSE will send checks to the Child Care applicant/recipient.

The assignment of support rights covers all Child Care applicants.

The child support payments are considered income for the purpose of determining financial eligibility and parent fees for Child Care cases.

#### **11003.4.1 Cooperation Responsibilities**

Clients must cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility. All families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify good cause.

In order to identify and locate absent parents, establish paternity, and obtain support payments and/or other property, applicants or recipients of Child Care services are required to participate in the following activities, if relevant:

1. To appear at an office of DSS or the Division of Child Support Enforcement to provide verbal or written information or documentary evidence known to or possessed by the applicant or recipient;
2. To appear as a witness at judicial or other hearings or proceedings;
3. To provide information or to attest to the lack of information under penalty of perjury.

#### **11003.4.2 Penalties for Child Support Non Cooperation**

Failure of a parent/caretaker, without good cause, to cooperate with and provide information to the DCSE will result in a Child Care case closure until compliance. Purchase of Care applicants who do not cooperate with or provide requested information to DCSE, will have their Child Care case closed until they cooperate.

#### **11003.4.3 Curing Child Support Penalties**

To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of needy children.

#### **11003.4.4 Good Cause Determination**

It is the responsibility of the Division of Child Support Enforcement (DCSE) to determine if good cause for refusing to cooperate exists. When good cause is determined to exist, the applicant may participate in the Child Care program and will not be required to cooperate in support collection activities.

#### **11003.4.5 Enforcement Without the Caretaker's Cooperation**

When good cause for non-cooperation exists, DCSE must decide whether or not child support enforcement activities can proceed without risk to the child or caretaker if the enforcement activities do not include cooperation. DSS will ask the applicant if he/she believes that enforcement activities can proceed and will relay that information to DCSE.

If a DCSE recommendation is to proceed with enforcement activities, DSS will notify the applicant and give the applicant the opportunity to withdraw the application or close the case before enforcement activities begin.

#### **11003.4.6 Fair Hearings**

Applicants and recipients have the right to request a fair hearing if they disagree with any DSS or DCSE decision made in regard to the child support assignment, non-cooperation, or good cause claim issues. DCSE will handle the fair hearing requests on issues of non-cooperation and good cause claim.

#### **11003.4.7 Child Support Enforcement Procedures**

1. At the eligibility interview, the DSS worker will explain, as outlined on Form 200 and Form 204, the automatic assignment of support rights, the client's responsibilities in relation to securing support and the

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circumstances that constitute good cause for refusal to cooperate. The applicant and worker will sign Form 200 and Form 204. A copy of each form will be given to the applicant.

2. At the time of application, if applicants have at least the minimum information required for child support case initiation and do not claim good cause, DSS staff should initiate the child support case via the computer. DSS assumes cooperation unless otherwise notified by DCSE.

An interview with the DCSE is waived in the following cases:

- a) Child Care cases where there are no children with absent parents;
- b) Child Care cases where deprivation is based on incapacity;
- c) Child Care cases in which good cause has been determined to exist. Good cause is

determined by DCSE:

d) Child Care reapplications where the caretaker has previously cooperated with the Division, and the absent parents involved in the case are the same individuals that were involved when the case was previously open.

3. When the DCSE indicates that the caretaker has been uncooperative, the Child Care case is closed.

4. If good cause is claimed, the client is asked to provide evidence to verify the claim to DCSE.

9 DE Reg. 572 (10/01/05)

## (Break in Continuity of Sections)

### 11003.7.4 Income Eligible/Training

Parent/caretakers who participate in a ~~training program~~ DSS Food Stamp or TANF Employment and Training program can continue receiving child care services for the duration of their participation as long as:

- A. the training was part of a TANF or Food Stamp Employability Development Plan; ~~or~~ and
- B. there is a reasonable expectation that the training course will lead to a job within a foreseeable time frame (6 to 18 months), such as persons participating in apprenticeship programs, on-the-job training programs, or vocational skill programs.

Child care services can continue for up to one month to allow for breaks between training programs or to allow for an employment search upon completion of training.

### 11003.7.5 Income Eligible/Education and Post-Secondary Education

Parents/caretakers who participate in education and post-secondary education can receive income eligible ~~e~~Child eCare for the duration of their participation as long as:

- A. their participation will lead to completion of high school, a high school equivalent or a GED; or
- B. their participation in post-secondary education was part of a DSS TANF Employment and Training program; or
- C. their participation in post-secondary education began while participating in the DSS Food Stamp Employment and Training (FS E and T) program; and
- D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.

DSS will not authorize child care services for parents/caretakers who already have one four year college degree or are in a graduate program.

9 DE Reg. 572 (10/01/05)

### 11003.7.6 Income Eligible/Protective Child Care

DSS will provide child care services for children who need to receive or who receive protective services from the Division of Family Services exclusive of other child care needs. DSS will also give service priority to protective children, meaning DSS will provide an exemption to protective children during a waiting list period. However, by agreement with the Division of Family Services, this exemption will only exist for a limited number of protective

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children. Currently the limitation is 280 children, but is subject to change based on available funding and forecasted need. ~~(An Interagency Agreement exists between the Department of Services For Children, Youth and Their Families, Division of Family Services, and the Department of Health and Social Services, Division of Social Services.)~~

**11003.7.7 Income Waiver**

DSS will waive the 200 percent income eligibility limitation for families when the child is receiving or needs to receive protective services. The need for care in this instance is coordinated with the Division of Family Services and is part of a range of services being provided to and/or required of the parent to help ensure the protection of the child.

**11003.7.8 Special Needs Children**

The designation of special needs impacts both eligibility and parent fees.

See section 11004.7 to determine eligibility for waiving the parent fee.

**Eligibility**

A family can be eligible for Child Care for a child that is between ages 13 and under 19 if the child has a special need that requires child care. This would mean the child is unable to care for himself physically or emotionally, or Division of Family Services (DFS) has referred the child for care due to a protective need.

Families with special needs children or adults must meet the need for services and income eligibility.

**EXAMPLE:** A financially eligible family with two working parents requests child care for their 14 year old child with Downs Syndrome. The 14 year old is incapable of caring for himself due to the Downs Syndrome. They would be eligible for Child Care due to the special needs of the child.

The special need of a child or an adult that directly results in the need for child care can in itself be the need for care when determining eligibility as long as they meet financial eligibility.

**EXAMPLE:** A financially eligible family of four with a working Father and a stay at home Mother requests child care for their 12 month old child with a developmental delay. In this case if it is verified that the child needs child care services to assist in increasing the development of the child, they would be eligible.

**EXAMPLE:** A financially eligible family of four with a working Father and a stay at home Mother requests child care for their two children ages 2 and 4. The mother was involved in a car accident and is unable to get out of bed. The special need of this mother would be the need for care.

All special needs for both the child and adult must be verified by using the Special Needs form.

~~Parent fees can be waived only in accordance with section 11004.7.~~

Special circumstances within a family may be considered on a case by case basis when determining the need for child care. These cases must be approved by the Child Care Administrator.

**EXAMPLE:** Two older grandparents have custody of their 4 yr old grandchild. The grandmother is unable to care for the child due to health reasons and the grandfather would like to look for work. There is no need for care since the grandfather is in the home. The circumstances of this four year old could qualify the grandparents for special needs child care. In this case still try to get a special needs form filled out that would address the 4 yr olds need to be in a day care setting with other children to enhance the child's social and emotional development.

Division of Family Services

DFS cases meet the need for service due to the DFS referral. DFS cases do not need to meet financial eligibility. DFS cases that are non citizens and do not meet our citizenship criteria are eligible for services due to the DFS referral. DCIS II Child Care Sub system would place these cases in Category 51.

Parent fees may be waived for DFS cases on a case by case basis, with supervisory approval.

9 DE Reg. 572 (10/01/05)

## 11003.8 Necessity of Child Care

For parent/caretakers to receive child care services, DSS will need to consider whether child care is necessary. Child care will be considered necessary when:

- A. the child is not in school during the hours of the parent/caretaker's employment; or
- B. the child is not in school during the hours of the parent/caretaker's participation in a training or education component of a DSS Food Stamp or TANF Employment and Training program; or
- C. ~~in all cases of two parent households, both parents must have a need for child care in order for DSS to provide child care services, for example~~ both parents in a two parent household have a need for child care. For example:
  1. in two parent households both parents work; or
  2. one works and the other has another need (such as education or training), is incapacitated (a parent who needs to participate in in-patient rehabilitation is included in the meaning of incapacitated) or is unavailable (such as one parent works the late shift and needs to sleep during the day while the other parent works); or
- D. there is no other ~~legally~~ responsible and capable adult in the household (such as another family member).

DSS will make an exception in the last case if the other adult household member is incapacitated, the child is at risk of abuse, or the age or disposition of the other adult makes it unlikely to expect him/her to provide care (such as grandparents are not required to provide care if they are not inclined to do so on their own).

### (Break in Continuity of Sections)

## 11004.2.1 Conducting the Interview

The interview will include:

- A. an evaluation of parents/caretakers need for child care services (see Section 11003);
- B. a determination of financial eligibility as needed;
- C. an assessment of the family's child care needs as well as the needs of the child(ren) to be placed in care;
- D. an explanation of the Child Support Cooperation requirement:
  - ~~DE~~ . an explanation of the available types of child care; the choices parents/caretakers have regarding these provider types; the various provider requirements regarding licensure, possible co-pays, health, and safety, including record of immunization; and required child abuse and criminal history checks;
  - ~~EF~~ . an explanation of DSS payment rates and parent fee scale, including a discussion of how fees are assessed, where fees are to be paid, what happens if the fee is not paid, and how parents/caretakers are to keep DSS informed of changes that affect fees;
  - ~~FG~~ . an explanation of parents/ caretakers rights and responsibilities;
  - ~~GH~~ . completion of the Application for Child Care Assistance, and as applicable completion of the Child Care Authorization and the Child Care Payment Agreement form; and
  - ~~HJ~~ . verification of appropriate information establishing need and income.

The entire process, from the time when parents/caretakers make an informal request for child care to the time when a decision is finally made, should take no longer than one month.

Parents/caretakers who fail to keep their initial appointment for an interview are given the opportunity to reschedule.

9 DE Reg. 572 (10/01/05)

**(Break in Continuity of Sections)****11004.3 Review and Verification of Eligibility Requirements**

As part of the formal application process, use the parents/caretakers interview to review and verify eligibility requirements. This interview will always include an evaluation of the parents/caretakers need for child care and, as appropriate, a determination of financial eligibility. Section 11003, Eligibility Requirements, provides guidance for this review.

When a parent/caretaker makes a contact to inquire about child care, ask the following questions of the parent/caretaker to determine and verify need (these questions follow the eligibility requirements noted in Section 11003 and match DCIS II Child Care Sub system need codes.

- A. Is the parent/caretaker employed or in need of child care to accept employment? (Category 12 for TANF employed or Category 31 if not on TANF) The caretaker must be part of the TANF grant to be a Category 12.
- B. Is the parent a TANF Employment and Training participant and needs care to participate in a TANF Employment and Training activity? (Category 11)
- C. Is the parent/caretaker a Food Stamp Employment & Training (FS E&T) participant? (This is Category 21.)
- D. Is the parent/caretaker a self-initiated participant (TANF, a mandatory or voluntary Food Stamp Employment & Training (FS E&T)? (This is Category 21.)
- E. Is the parent/caretaker in and regularly attending a training program or going to school? (Category 31)
- F. Is a special needs child or parent/caretaker in the household? (Category 31)
- G. Is there a protective referral from Family Services? (Category 31)
- H. If the parent/caretaker meets a Category 13 or 31 need, is the family income equal to or below 200 percent of the federal poverty level?

Use the appropriate documents identified in Section 11004.2 to verify the need for service. However, verification will not delay authorization of service in the event documentation is not immediately available. Authorize service while allowing parents/caretakers ten days to provide the appropriate verification. If the client is applying for services the system will automatically determine eligibility for Presumptive Child Care. The system will generate the appropriate notices, request the information and end date the authorization. If the client does not meet presumptive requirements and fails to provide requested information the system will close the case and give appropriate notice. (For more detail on Presumptive Child Care see section 11004.8)

**9 DE Reg. 572 (10/01/05)**

**11004.3.1 Service Priorities**

In addition to the eligibility questions in Section 11004.3, determine if the applicant meets a priority for service. If the applicant has a need, but is not a service priority, services may be delayed. Delay services by placing non-service priority applicants on a waiting list while authorizing service for those who are a priority. The following families qualify for priority service:

- A. TANF recipients who are Workfare mandatory and not working (Category 11);
- B. TANF recipients who are working; (Category 12);
- C. Individuals receiving FS who are mandatory E&T participants; (Category 21);
- D. Families in Category 31 with the following need for service:
  - 1. teen parents who attend high school or ABE or GED programs,
  - 2. special needs parent/caretaker or child, and
  - 3. homeless families as defined in Section 11003.7.2;
  - 4. families who meet the ~~75%~~ 40% of FPL criteria in Section 11004.7
- E. protective children as referred by Family Services up to the number agreed upon between DSS and Family Services.

Parents/caretakers in the above circumstances will continue to receive child care services as long as they meet the service need and they continue to meet program requirements, e.g., they continue in Food Stamp Employment and Training (FS E&T).

9 DE Reg. 572 (10/01/05)

## (Break in Continuity of Sections)

### 11004.7 Determination Of The Child Care Parent Fee and Fee Waiving Situations

Under regulations, eligible families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a DSS child care parent fee. DSS, however, provides child care services to certain families at no cost. Part of the process after determining the client's financial eligibility and need for child care would be determining the parent fee and which families should have their parent fee waived.

All ~~child~~ child care fees ~~will~~ may be waived if the family meets one of the ~~six (6)~~ five (5) conditions below.

1. ~~On a case by case basis,~~ Families active with and referred by the Division of Family Services (DFS) including foster care families. This requires supervisory approval.

2. Families in Delaware's TANF Program in Categories 11 and 12, and General Assistance (GA) families.

3. ~~Families where the need for service is solely based on the special needs of the child or the caretaker/parent. Families must first be financially eligible for Child Care Services. (See policy section 11003.7)~~

~~EXAMPLE: A family consisting of a working mother and two children applies for Purchase of Care. One child has ADD/HD and mom needs child care because she is working. The parent fee for the child with ADD/HD would not be waived due to special needs. The need for care is based on her employment not the special need.~~

~~EXAMPLE: A family consisting of a working father, stay at home mother and two children applies for POC. They are income eligible and the mom states she needs childcare because her one child is developmentally delayed and needs increased socialization. If this is verified by a professional on the Special Needs form 611, they may receive child care for that child based on the special need and the parent fee for that child will be waived. (Note, the only need for child care is due to the child's special need, Mom is at home so there would not otherwise be a need for POC.)~~

4. ~~3.~~ Caretakers in Category 31 caring for a child/ children who receive TANF or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).

5. ~~4.~~ When paying the fee creates an excessive financial burden. Excessive financial burden is defined as a situation where the family's disposable income prior to the deductions or after the deductions, result in the family having income below ~~75%~~ 40% of the federal poverty level. Deductions are limited to:

rent, mortgage, lot rent;

any mandatory expenses required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);

actual current monthly utility expenses (e.g., electric, gas, trash, water and sewer). Late fee's and past due amounts are not included.

telephone expenses are capped at the same rate as the FS standard deduction for telephone bills;

un-reimbursed medical costs (Before considering these medical costs as deductions, families not already receiving Medicaid or on the Delaware Healthy Children Program (DHCP) must first apply for either Medicaid or the DHCP. The DHCP premiums are included in the un-reimbursed medical cost deductions. Any un-reimbursed medical costs not covered by Medicaid or the DHCP will be considered as a deduction to determine the family's income for excessive financial burden.)

#### EXAMPLE:

A family of three has gross monthly income of ~~\$1,417.00~~ \$1,300.00. The parent fee for this family would be ~~23%~~ 16% of the cost of care. The rent payment for this family is ~~\$550~~ \$600/ month. Utility expenses are \$20 for phone and ~~\$65~~ \$165 for electric.

Total income per month equals:	<del>\$1,417.00</del> <u>\$1,300.00</u>
Total expenses are:	<del>\$ 635.00</del> <u>\$785.00</u>
After deductions:	<del>\$ 782.00</del> <u>\$515.00</u>

# PROPOSED REGULATIONS

~~\$782.00~~ \$515.00 is less than ~~\$954.00~~ \$553.00, ~~75%~~ 40% of the federal poverty level for a family of 3, so this family can have the parent fee waived.

**EXAMPLE:**

A family of four has a gross monthly income of \$2,203.00. The parent fee for this family would be 44% of the cost of care. The rent payment for this family is \$600/ month. Utility expenses are \$20 for phone and \$165 for electric.

Total income per month equals:	\$2,203.00
Total expenses are:	\$ 785.00
After deductions:	\$1,418.00

\$1,418.00 is more than ~~\$1,150.00~~ \$666.00, ~~75%~~ 40% of the federal poverty level for a family of 4, so this family will not have the parent fee waived.

~~6.5.~~ Teen parents 18 years old or younger attending high school or a high school equivalent.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

**8 DE Reg. 1310 (3/1/05)**

## DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Council on Apprenticeship and Training

Statutory Authority: 19 Delaware Code, Section 202(a) (19 **Del.C.** §202(a))

### PROPOSED

### PUBLIC NOTICE

The Governor's Council on Apprenticeship and Training in accordance with 19 **Del.C.** §202(a) has proposed changes to the rules and regulations relating to apprenticeship and training. The proposal modifies the number of classes a registered Apprentice can miss while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware before being dropped from that school. Being dropped from the school will result in the Apprentice's Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

A public hearing will be held before the Council on Apprenticeship and Training ("Council") at 1:00 p.m. on October 5, 2006, at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rule may obtain a copy from Kevin Calio, Manager, Apprenticeship and Training, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19808-0828. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

### 106 Apprenticeship and Training Regulations

#### 1.0 Purpose and Scope

1.1 Section 204, Chapter 2, Title 19, **Delaware Code** authorizes and directs the Department of Labor to formulate regulations to promote the furtherance of labor standards necessary to safeguard the welfare of Apprentices and to extend the applications of such standards by requiring their inclusion in apprenticeship contracts.

1.2 The purpose of this chapter is to set forth labor standards to safeguard the welfare of Apprentices and to extend the application of such standards by prescribing policies and procedures concerning the registration of acceptable Apprenticeship Programs with the Delaware Department of Labor.

1.3 These labor standards and procedures cover the Registration and Cancellation of Apprenticeship

Agreements and of Apprenticeship Programs; and matters relating thereto. Any questions [and/or] to request a copy of Delaware's Prevailing Wage Regulations regarding the employment of apprentices on state-funded construction projects must be referred to:

Delaware Department of Labor  
Office of Labor Law Enforcement  
4425 North Market Street  
Wilmington, DE 19802  
(302) 761-8200

## 2.0 Declaration of Policy

2.1 It is declared to be the policy of this State to:

2.1.1 encourage the development of an apprenticeship and training system through the voluntary cooperation of management and workers and interested State agencies and in cooperation with other states and the federal government;

2.1.2 provide for the establishment and furtherance of Standards of Apprenticeship and Training to safeguard the welfare of Apprentices and trainees;

2.1.3 aid in providing maximum opportunities for unemployed and employed persons to improve and modernize their work skills; and

2.1.4 contribute to a healthy economy by aiding in the development and maintenance of a skilled labor force sufficient in numbers and quality to meet the expanding needs of industry and to attract new industry.

**3 DE Reg. 641 (11/1/99)**

## 3.0 Definitions

3.1 As used in this part:

"**Administrator**" refers to the Administrator of the Office of Apprenticeship and Training for the State Department of Labor.

"**Agreement**" refers to a written agreement between an Apprentice and either his/her employer or an Apprenticeship Committee acting as agent for the Employer which contains the terms and conditions of the employment and training of the Apprentice.

"**Apprentice**" refers to a person at least sixteen years of age who is engaged in learning a recognized skilled trade through actual work experience under the supervision of a Journeyperson. This person must enter into a written Apprenticeship Indenture Agreement with a registered apprenticeship sponsor. The training must be supplemented with properly coordinated studies of related technical instruction. All hours worked by a registered apprentice, while in the employ of the apprentice's sponsor, shall be considered apprenticeship hours to be counted toward wage progression increments and completion of his/ her on-the-job training hours as set forth in the Apprenticeship Indenture Agreement.

"**Apprenticeship Standards**" refers to the document which embodies the procedure for the selection and the training of apprentices, setting forth the terms of the training, including wages, hours, conditions of employment, training on the job, and related instruction. The duties and responsibilities of the Sponsor, including administrative procedures, are set forth in their company's policies.

"**BAT**" refers to the U.S. Department of Labor, Bureau of Apprenticeship and Training.

"**Cancellation**" refers to the deregistration of a Program or the Termination of an Agreement.

"**Committee**" refers to those persons designated by the Sponsor to act on its behalf in the administration of the Apprenticeship Program. A Committee may be "joint" i.e., it is composed of an equal number of representatives of the employer(s) and of the employee(s) represented by a bona fide collective bargaining agent(s) and has been established to conduct, operate or administer a Program and enter into Agreements with Apprentices. A Committee may be "unilateral" or "non-joint" and shall mean a Program Sponsor in which a bona fide collective bargaining agent is not a participant.

"**Council**" refers to the Governor's Advisory Council On Apprenticeship and Training.

"**Delaware Resident Contractor**" includes any general contractor, prime contractor, construction manager, subcontractor or other type of construction contractor who regularly maintains a place of business in Delaware. Regularly maintaining a place of business in Delaware does not include site trailers, temporary structures associated with one contract or set of related contracts, nor the holding, nor the maintaining of a post office box within this State. The specific intention of this definition is to maintain consistency with Title 30, **Delaware Code**, section

2501(3) "Resident Contractor".

"**Director**" refers to the Director of the Division of ~~Employment and Training~~ Industrial Affairs.

"**Division**" refers to the Division of ~~Employment and Training~~ Industrial Affairs, Department of Labor, State of Delaware.

"**Employer**" refers to any person or organization employing an Apprentice, whether or not such person or organization is a party to an Apprenticeship Agreement.

"**Journey person**" refers to a worker who is fully qualified as a skilled worker in a given craft or trade.

"**On-site Visit**" refers to a visit from a representative of the State of Delaware, Department of Labor, Division of ~~Employment and Training~~ Industrial Affairs to the office and/or the actual field job-site of the Sponsor, for the purposes of inspecting and/or monitoring the progress and training of the Registered Apprentice. This monitoring may include but is not limited to interviewing the Apprentice and the auditing of pertinent documents relative to the maintenance and enforcement of the terms of the Apprenticeship Agreement.

"**Program**" refers to an executed apprenticeship plan which contains all terms and conditions for the qualifications, recruitment, selection, employment and training of Apprentices, including such matters as the requirements for a written Apprenticeship Agreement.

"**Registrant or Sponsor**" refers to any person, association, committee or organization in whose name or title the Program is (or is to be) registered or approved regardless of whether or not such entity is an Employer. To be eligible, the Registrant or Sponsor must be a "Delaware Resident Contractor" or hold and maintain a "Delaware Resident Business License". The Registrant or Sponsor must hold and maintain a permanent place of business, not to include site trailers or other facilities serving only one contract or related set of contracts. To be eligible to be a Registrant or Sponsor, Employer/Business, association, committee or organization must have the training program and an adequate number of Journey persons to meet the ratio requirements as stated for that particular apprenticeable occupation.

"**Registration**" refers to the acceptance and recording of an Apprenticeship Program by the Delaware Department of Labor, Office of Apprenticeship and Training, as meeting the basic standards and requirements of the Division for approval of such Program. Approval is evidenced by a Certificate or other written indicia documentation. Registration also refers to the acceptance and recording of Apprenticeship Agreements thereof, by the Delaware Department of Labor, Office of Apprenticeship and Training, as evidence of the participation of the Apprentice in a particular Registered apprenticeship Program.

"**Related Instruction**" refers to a formal and systematic form of instruction designed to provide the Apprentice with knowledge of the theoretical and technical subjects related to his/her trade.

"**Secretary**" refers to the Secretary of Labor.

"**State**" refers to the State of Delaware

"**Supervisory Inspection**" shall mean the same as "ON SITE VISIT".

### **3 DE Reg. 641 (11/1/99)**

#### **4.0 Eligibility and Procedure for State Registration**

4.1 No Program or Agreement shall be eligible for State Registration unless it is in conformity with the requirements of this chapter, and the training is in an apprenticeable occupation having the characteristics set forth in section 5.0 herein.

4.2 Apprentices must be individually registered under a Registered Program with the State of Delaware, Department of Labor, Division of ~~Employment and Training~~ Industrial Affairs. Such registration shall be effective when the completed agreement is submitted to and signed by the Administrator. Sponsors registered with states other than the State of Delaware shall not be construed as being registered for State of Delaware Apprenticeship Program Registration purposes.

4.3 The State must be properly notified through the Department of Labor, Division of ~~Employment and Training~~ Industrial Affairs, Office of Apprenticeship and Training of cancellation, suspension or termination of any Agreements, (with cause for same) and of apprenticeship completions. The State will attempt, where applicable, to verify the cause of apprenticeship termination.

4.4 Approved Programs shall be accorded Registration, evidenced by a Certificate of Registration. The Certificate of Registration for an approved Program will be made in the name of the Program Sponsor and must be renewed every four (4) years.

4.5 Any modification(s) or change(s) to registered standards shall be promptly submitted to the State through the appropriate office no later than thirty (30) days and, if approved, shall be recorded and acknowledged as

an amendment to such standards.

4.6 Under a Program proposed for Registration by an Employer or Employer's Association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any way in the operation of the Program, and such participation is exercised, written acknowledgment of a union agreement or "no objection" to the Registration is required. Where no such participation is evidenced and practiced, the Employer shall simultaneously furnish to the union a copy of its Program application. In addition, upon receipt of the application for the Program, the State shall promptly send by certified mail to such local union another copy of the Program application and together with a notice that union comments will be accepted for thirty (30) days after the date of the agency transmittal.

4.7 Where the employees to be trained have no collective bargaining agent, a program plan may be proposed for Registration by an Employer or groups of Employers.

4.8 A Sponsor may register Programs in one or more occupations simultaneously or individually with the provision that the Program Sponsor shall, within sixty (60) days of Registration, be actively training Apprentices on-the-job and related study must begin within twelve (12) months for each occupation for which Registration is granted. At no time shall an individual Apprentice be employed in more than one (1) occupation, nor signed to more than one (1) Apprenticeship Agreement at any given time.

4.9 Each occupation for which a Program Sponsor holds Registration shall be subject to Cancellation if no active training of Apprentices on the job has occurred within a consecutive one hundred eighty (180) day period or if no Related Instruction has begun within a twelve (12) month period from the date of Registration or in any twelve (12) month period during the duration of that Agreement.

4.10 Each Sponsor of a Program shall submit to an on-site inspection or supervisory visit and shall make all documents pertaining to the Registered Program available to appropriate representatives of the Apprenticeship and Training Office or designated service personnel upon request.

4.11 Each Sponsor shall be so routinely examined, by the Office of Apprenticeship and Training, at least annually, but not more than every six (6) months, unless a specific violation is suspected or a specific document is being investigated.

4.12 The Sponsor shall notify the State Registration Agency of termination or lay-off from employment of a Registered Apprentice or of the completion of the terms of the Apprenticeship Agreement within thirty (30) calendar days of such occurrence.

4.13 The Sponsor shall notify the State of failure to obtain and register the Apprentice in an approved course of Related Instruction as stated and detailed on the Apprenticeship Agreement within (30) calendar days of such occurrence.

4.14 It shall be the responsibility of the Sponsor to monitor the progress and attendance of the Apprentice in all phases of training such as, but not limited to, on-the-job and/or Related Training.

**(Break in Continuity of Sections)**

**6.0 Standards of Apprenticeship**

6.1 The following standards are prescribed for a Program.

6.1.1 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.

6.2 The standards must contain provisions concerning the following:

6.2.1 The employment and training of the Apprentice in a skilled occupation;

6.2.2 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;

6.2.3 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;

6.2.4 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;

6.2.5 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

# PROPOSED REGULATIONS

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 and Training;

6.2.6 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 Journeyperson's hourly wage;

6.2.7 Minimum Wage Progression for 1 through 7 year Apprentice Program as follows:

6.2.7.1 1 to 7 year programs

6.2.7.2 starting pay must be at least minimum wage

6.2.7.3 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%

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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%

6.2.8 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;

6.2.9 That the established Journeyperson'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 Journeyperson'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.

6.2.9.1 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;

6.2.10 That the established Journeyperson'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 Journeypersons shall be receiving wages at least in the amount set for Journeypersons in their individual program standards, or are qualified to perform as Journey persons and must be paid at least the minimum journeyperson rate;

6.2.11 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 Journeyperson 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.

6.3 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.

6.4 The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

6.4.1 The ratio of Apprentices to Journeypersons shall be one Apprentice up to each five (5) Journeypersons employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement.

6.4.2 The following have been recognized to be the industry standard for the listed trades:

Ratio of Apprentice Journeypersons*	
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
1 up to 3	Plumbers/Pipefitters
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 Journeyperson is necessary in any trade for the first Apprentice.

#### 6.4.3 Exceptions.

6.4.3.1 If a collective bargaining agreement stipulates a ratio of Apprentices to Journeyperson, it shall prevail provided the Bargaining Ratio is not lower than the State standard.

6.4.3.2 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.

6.5 A probationary period shall be in relation to the full apprenticeship term with full credit toward completion of apprenticeship.

6.6 Adequate and safe equipment facilities for training and supervision and safety training for Apprentices on the job and in Related Instruction are required.

6.7 The required minimum qualifications for persons entering an Apprentice Program must be met.

6.8 Apprentices must sign an Agreement. The Agreement shall directly, or by reference, incorporate the standards of the Program as part of the Agreement.

6.9 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.

6.10 When a registered apprentice is no longer employed by a Sponsor, the Sponsor shall determine the time and training earned during his or her employment and send notice of such progress to the Apprenticeship and Training Section of the Delaware Department of Labor and to the apprentice in writing.

6.11 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.

6.12 These Standards shall contain a statement of assurance of qualified training personnel.

6.13 There will be recognition for successful completion of apprenticeship evidenced by an appropriate certificate.

6.14 These Standards shall contain proper identification of the Registration Agency, being the Department of Labor, Division of ~~Employment and Training~~ Industrial Affairs, Office of Apprenticeship and Training.

6.15 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.

6.16 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.

6.17 There will be a provision giving authority for the termination of an Agreement during the probationary period by either party without stated cause.

6.18 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.

6.19 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.

6.20 There will be provisions for recording and maintaining all records concerning apprenticeships as may be required by the State or Federal law.

6.21 There will be provisions for a participating Employer's Agreement.

6.22 There will be funding formula providing for the equitable participation of each participating Employer in funding of a group Program where applicable.

6.23 All Apprenticeship Standards must contain articles necessary to comply with federal laws, regulations

and rules pertaining to apprenticeship.

6.24 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.

### (Break in Continuity of Sections)

## 9.0 Related Instruction Requirement

9.1 Regulations concerning Apprentices "attendance and tardiness" policy for related instruction.

9.1.1 A registered Apprentice who misses ~~seven (7)~~ six (6) classes while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware will be dropped from school. This will result in their Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

9.1.2 An absence will result when an Apprentice either arrives late or leaves early three (3) times. However, School District Officials may bring to the Administrator's attention, individual cases that may have experienced extenuating circumstances. With the Administrator's approval, such individuals may be granted exemption from this attendance policy.

9.1.3 Courses of fewer sessions will be prorated. Instructors will inform Apprentices of allowable absences.

9.1.4 If you are a Registered Apprentice who is enrolled through a trade union, trade society or any other organization that stipulates attendance rules more stringent than the above, then you are required to follow those regulations.

9.1.5 Related Instruction that is delivered through a state approved "in-house program", correspondence courses or other systems of equivalent value will require the Apprentice to produce a document detailing satisfactory participation and completion.

**3 DE Reg. 641 (11/1/99)**

**\*Please Note: As the rest of the sections were not amended they are not being published.**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)

### PUBLIC NOTICE

**SAN # 2006-08**

#### 1. Title of the Regulations:

Regulation 1141 (Formerly No. 41) - "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products," Section 1 - Architectural and Industrial Maintenance Coatings, of the State of Delaware "Regulations Governing the Control of Air Pollution."

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

DNREC is proposing to amend Regulation 1141 to include a manufacturer's record retention period, and to modify the definition of a specialty primer, sealer, undercoater product to include sealing in efflorescence. At the same time, typographical errors will be corrected and the entire regulation renumbered consistent with the style manual of the **Code of Delaware Regulations**.

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

None

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

7 **Delaware Code**, Chapter 60

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

None

**6. Notice of Public Comment:**

The public comment period for this proposed amendment will extend through at least October 2, 2006. Interested parties may submit comments in writing during this time frame to: Gene M. Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday October 2, 2006, beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. Prepared By:**

Gene Pettingill (302) 324-2071 August 8, 2006

## 1141 Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products

### 1.0 Architectural and Industrial Maintenance Coatings

#### 1.1 Applicability

1.1.1 Except as provided in 1.1.2 and 1.1.3, Section 1.0 applies to any person who supplies, sells, offers for sale, blends, repackages for sale, or manufactures any architectural coating for use in the State of Delaware, as well as any person who applies or solicits the application of any architectural coating in the State of Delaware on or after January 1, 2005.

1.1.2 A coating manufactured prior to January 1, 2005, may be sold, supplied, or offered for sale on or after January 1, 2005. In addition, a coating manufactured before January 1, 2005 may be applied at anytime, both before and after January 1, 2005, so long as the coating complied with the standards in effect at the time the coating was manufactured. This does not apply to any coating that does not display the date code required by 1.4.1.

1.1.3 This Section does not apply to,

1.1.3.1 any architectural coating that is sold or manufactured for use outside the State of Delaware or for shipment to other manufacturers for reformulation or repackaging.

1.1.3.2 any aerosol coating product, or

1.1.3.3 any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

#### 1.2 Definitions

Terms used but not defined in Section 1.0 shall have the meaning given them in Regulation 1101 or the CAA, in that order of priority.

**"Adhesive"** means any chemical substance that is applied for the purposes of bonding two surfaces together other than by mechanical means.

**"Aerosol coating product"** means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic marking applications.

**"Antenna coating"** means a coating labeled and formulated exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

**"Anti-fouling coating"** means a coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an anti-fouling coating, the coating must be registered with the U. S. EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U. S. C. Section 136 et seq.) and with the Department of Agriculture of the State of Delaware under Title 3 **Del.C.** Ch. 12.

**"Appurtenance"** means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors;

elevators; fences; hand railings; heating equipment; air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways; fixed ladders; catwalks and fire escapes; and window screens.

**"Architectural coating"** means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purpose of Section 1.0.

**"ASTM"** means the American Society for Testing and Materials.

**"BAAQMD"** means the Bay Area Air Quality Management District, a part of the California Air Resources Board (CARB) which regulates air quality in the State of California.

**"Bitumens"** means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

**"Bituminous roof coating"** means a coating which incorporates bitumens that is labeled and formulated exclusively for roofing.

**"Bituminous roof primer"** means a primer which incorporates bitumens that is labeled and formulated exclusively for roofing.

**"Bond breaker"** means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it was poured.

**"Calcimine recoater"** means a flat solventborne coating formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-painted substrates.

**"CAA"** means the Clean Air Act, as amended in 1990.

**"Clear brushing lacquers"** means clear wood coatings, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid protective film, which are intended exclusively for application by brush and which are labeled as specified in 1.4.5.

**"Clear wood coatings"** means clear and semi-transparent coatings, including clear brushing lacquers, clear lacquer sanding sealers, sanding sealers other than clear lacquer sanding sealers and varnishes, applied to wood substrates to provide a transparent or translucent film.

**"Coating"** means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

**"Colorant"** means a concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sales units to produce the desired color.

**"Concrete curing compound"** means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

**"Concrete surface retarder"** means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

**"Conversion varnish"** means a clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

**"Dry fog coating"** means a coating labeled and formulated only for spray application such that over spray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

**"Exempt compound"** means a compound identified as exempt under the definition of Volatile Organic Compound (VOC) in Regulation 1101. Exempt compound content of a coating shall be determined by U. S. EPA Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91 (Revised February 1993), incorporated by reference in 1.6.5.10.

**"Faux finishing coating"** means a coating labeled and formulated as a stain or glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

**"Fire-resistive coating"** means an opaque coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials, that has been fire tested and rated by a testing agency and approved by State of Delaware building code officials for the County or local jurisdiction for use in bringing assemblies of structural materials into compliance with federal, state and local building code

requirements. The fire-resistive coating and the testing agency must be approved by State of Delaware building code officials for the County or local jurisdiction. The fire-resistive coating shall be tested in accordance with ASTM Designation E 119-98, incorporated by reference in 1.6.5.2.

**"Fire-retardant coating"** means a coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency approved by State of Delaware building code officials for the County or local jurisdiction for use in bringing building and construction materials into compliance with federal, state and local building code requirements. The fire-retardant coating and the testing agency must be approved by State of Delaware building code officials for the County or local jurisdiction. The fire-retardant coating shall be tested in accordance with ASTM Designation E 84-99, incorporated by reference in 1.6.5.1.

**"Flat coating"** means a coating that is undefined under any other definition in 1.2 and that registers gloss less than 15 on an 85-degree meter or less than 5 on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in 1.6.5.3.

**"Floor coating"** means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces, which may be subjected to foot traffic.

**"Flow coating"** means a coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

**"Form-release compound"** means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

**"Graphic arts coating or sign paint"** means a coating labeled and formulated for hand application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

**"High-temperature coating"** means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

**"Impacted immersion coating"** means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage caused by floating ice or debris.

**"Industrial maintenance coating"** means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates exposed to one or more of the extreme environmental conditions listed in (1) through ~~(6)~~(5) and labeled as specified in 1.4.4:

- (1) immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;
- (2) acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes or chemical mixtures or solutions;
- (3) repeated exposure to temperatures above 121°C (250°F);
- (4) repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; or
- ~~(6)~~(5) exterior exposure of metal structures and structural components.

**"Lacquer"** means a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film.

**"Low-solids coating"** means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

**"Magnesite cement coating"** means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

**"Mastic texture coating"** means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, that is recommended to be applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

**"Metallic pigmented coating"** means a coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, incorporated by reference in 1.6.5.4.

**"Multi-color coating"** means a coating that is packaged in a single container and that exhibits more than one color when applied in a single coat.

**"Non-flat coating"** means a coating that is undefined under any other definition in 1.2 and that registers a gloss of 15 or greater on an 85-degree meter and 5 or greater on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in 1.6.5.3.

**"Non-flat - high gloss coating"** means a non-flat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in 1.6.5.3.

**"Non-industrial use"** means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; and utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.

**"Nuclear coating"** means a protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusions by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure [ASTM Method D 4082-89, incorporated by reference in 1.6.5.14], relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed [ASTM Method D 3912-80, incorporated by reference in 1.6.5.15].

**"Post-consumer coating"** means a finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.

**"Pre-treatment wash primer"** means a primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM Designation D 1613-96, incorporated by reference in 1.6.5.5, that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

**"Primer"** means a coating labeled and formulated for application to a substrate to provide a firm bond between the substrate and subsequent coats.

**"Quick-dry enamel"** means a non-flat coating that is labeled as specified in 1.4.8 and that is formulated to have the following characteristics:

(1) can be applied directly from the container under normal conditions with ambient temperatures between 160° and 270°C (600° and 800°F);

(2) when tested in accordance with ASTM Designation D 1640-95, incorporated by reference in 1.6.5.6, sets to the touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

(3) has a dried film gloss of 70 or above on a 60-degree meter.

**"Quick-dry primer, sealer and undercoater"** means a primer, sealer, or undercoater that is dry to the touch in 30 minutes and can be re-coated in two hours when tested in accordance with ASTM Designation D 1640-95, incorporated by reference in 1.6.5.6.

**"Recycled coating"** means an architectural coating formulated such that not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.

**"Roof coating"** means a non-bituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat or ultraviolet radiation. Metallic pigmented roof coatings, which qualify as metallic pigmented coatings, shall be considered to be in the metallic pigmented coatings category.

**"Rust preventive coating"** means a coating formulated exclusively for non-industrial use to prevent the corrosion of metal surfaces and labeled as specified in 1.4.6.

**"Sanding sealer"** means a clear wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer is not included in this category, but is included in the lacquer category.

**"SCAQMD"** means the South Coast Air Quality Management District, a part of the California Air Resources Board (CARB), which is responsible for regulation of air quality in the State of California.

**"Sealer"** means a coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

**"Secondary coating (rework)"** means a fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include

excess virgin resources of the manufacturing process.

**"Shellac"** means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*lacifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

**"Shop application"** means application of a coating to a product or a component of a product in or on the premises of a factory or shop as part of a manufacturing, production, or repairing process (e.g., original equipment manufacturing coatings).

**"Solicit"** means to require for use or to specify, by written or oral contract.

**"Specialty primer, sealer, and undercoater"** means a coating labeled as specified in 1.4.7 and that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; to seal efflorescence; or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM Designation D 4214-98, incorporated by reference in 1.6.5.7.

**"Stain"** means a clear, semi-transparent, or opaque coating labeled and formulated to change the color of a surface, but not to conceal the grain pattern or texture.

**"Swimming pool coating"** means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

**"Swimming pool repair and maintenance coating"** means a rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

**"Temperature-indicator safety coating"** means a coating labeled and formulated as a color changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

**"Thermoplastic rubber coating and mastic"** means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments and modifying resins.

**"Tint base"** means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

**"Traffic marking coating"** means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

**"Undercoater"** means a coating labeled and formulated to provide a smooth surface for subsequent coatings.

**"Varnish"** means a clear wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

**"VOC content"** means the weight of VOC per volume of coating, calculated according to the procedures specified in 1.6.1.

**"Waterproofing sealer"** means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

**"Waterproofing concrete/masonry sealer"** means a clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light and staining.

**"Wood preservative"** means a coating labeled and formulated to protect exposed wood from decay or insect attack, that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, et. seq.) and with the Department of Agriculture of the State of Delaware under Title 3 **Del.C.** Ch. 12.

### 1.3 Standards

1.3.1 Except as provided in 1.3.2, and 1.3.7, no person subject to the requirements of this Section shall manufacture, blend, repackage for sale, supply, sell or offer for sale, solicit for application or apply in the State of Delaware, any architectural coating with a VOC content in excess of the corresponding limit specified in Table 1-1.

1.3.2 If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by the manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Table 1-1, then the most restrictive VOC content limit shall apply. This provision does not apply to the coating categories specified in 1.3.2.1 through 1.3.2.19.

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1.3.2.1	Antenna coatings
1.3.2.2	Anti-fouling coatings
1.3.2.3	Bituminous roof primers
1.3.2.4	Calcimine recoaters
1.3.2.5	Fire-retardant coatings
1.3.2.6	Flow coatings
1.3.2.7	High-temperature coatings
1.3.2.8	Impacted immersion coatings
1.3.2.9	Industrial maintenance coatings
1.3.2.10	Lacquer coatings (including clear lacquer sanding sealers)
1.3.2.11	Low-solids coating
1.3.2.12	Metallic pigmented coatings
1.3.2.13	Nuclear coatings
1.3.2.14	Pre-treatment wash primers
1.3.2.15	Shellacs
1.3.2.16	Specialty primers, sealers, and undercoaters
1.3.2.17	Temperature-indicator safety coatings
1.3.2.18	Thermoplastic rubber coatings and mastic
1.3.2.19	Wood preservatives

1.3.3 All architectural coating containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These architectural coating containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOC-containing materials used for thinning or cleanup shall also be closed when not in use.

1.3.4 No person shall apply or solicit the application of any architectural coating that is thinned to exceed the applicable VOC limit specified in Table 1-1.

1.3.5 No person shall apply or solicit the application of any rust preventive coating for industrial use unless such rust preventive coating complies with the industrial maintenance coating VOC limit specified in Table 1-1.

1.3.6 For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 1-1, the VOC content limit shall be determined by classifying the coating as a flat coating or a non-flat coating, based on its gloss, as defined in "Flat coating", "Non-flat coating", "Non-flat - high gloss coating" of Section 1.2 of this regulation and the corresponding flat or non-flat coating limit shall apply.

1.3.7 Notwithstanding the provisions of 1.3.1, a person or facility may add up to 10 percent by volume of VOC to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70 percent and the temperature below 65°F, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

#### 1.4 Container Labeling Requirements

Each manufacturer of any architectural coatings subject to this rule shall display the information listed in 1.4.1 through 1.4.9 on the coating container (or label) in which the coating is sold or distributed, on or after January 1, 2005.

1.4.1 The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the Department.

1.4.2 A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

1.4.3 Each container of any coating subject to this rule shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods in 1.6.2. The equations in 1.6.1 shall be used to calculate VOC content.

1.4.4 All industrial maintenance coatings shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions noted below:

- 1.4.4.1 For industrial use only
- 1.4.4.2 For professional use only
- 1.4.4.3 Not for residential use
- 1.4.4.4 Not intended for residential use
- 1.4.5 The labels of all clear brushing lacquers shall prominently display the statements "For brush application only", and "This product must not be thinned or sprayed".
- 1.4.6 The labels of all rust preventive coatings shall prominently display the statement "For metal substrates only".
- 1.4.7 The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed below;
  - 1.4.7.1 For blocking stains
  - 1.4.7.2 For fire-damaged substrates
  - 1.4.7.3 For smoke-damaged substrates
  - 1.4.7.4 For water-damaged substrates
  - 1.4.7.5 For excessively chalky substrates
  - 1.4.7.6 To seal in efflorescence
- 1.4.8 The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.
- 1.4.9 The labels of all non-flat-high gloss coatings shall prominently display the words "High Gloss".
- 1.5 Reporting Requirements
  - 1.5.1 Each manufacturer of a product subject to a VOC content limit in Table 1-1 shall keep records demonstrating compliance with the VOC content limits. Such records shall clearly list each covered product by name (and identifying number if applicable) as shown on the product label, and in applicable sales and technical literature, the VOC content determined as in 1.6.1 and 1.6.2, the name(s) of the regulated VOC constituents in the product, the dates of VOC determinations, and the coating category and VOC content limit under which the product is regulated in Section 1.0 of this regulation. These records shall be kept for a period of at least five years (60 months) from when generated.
  - 1.5.2 Although routine reporting by manufacturers of coating products is not required, from time-to-time the Department may request certain specific data concerning sales and distribution of coating products in Delaware. A manufacturer shall, within 90 days, accede to such requests for information. Requested information shall include, but not be limited to:
    - 1.5.2.1 The name and full mailing address of the manufacturer
    - 1.5.2.2 The name, address and telephone number of a contact person
    - 1.5.2.3 The regulated product name as described on the label and the coating category in Table 1-1 under which the product is regulated
    - 1.5.2.4 If the product is marketed for interior or exterior use
    - 1.5.2.5 Number of gallons sold in Delaware during the requested time period in containers greater than 1 liter
    - 1.5.2.6 Number of gallons sold in Delaware during the requested time period in containers of 1 liter or less
    - 1.5.2.7 The actual and regulatory VOC content in grams per liter (if product in containers less than or equal to 1 liter has a different VOC content than product in containers larger than 1 liter, list them separately)
    - 1.5.2.8 The actual and regulatory VOC content in grams per liter after recommended thinning (if product in containers less than or equal to 1 liter has a different VOC content than product in containers larger than 1 liter, list them separately)
    - 1.5.2.9 The name(s) of the VOC constituents of the product
    - 1.5.2.10 The name(s) of any exempt compounds in the product
- 1.6 Compliance Provisions and Test Methods
  - 1.6.1 For the purpose of determining compliance with the VOC content limits in Table 1-1, the VOC content of a coating shall be determined by using the procedures described in 1.6.1.1 or 1.6.1.2, as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.
    - 1.6.1.1 With the exception of low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOC content using equation 1 as follows:

$$(1) \quad \text{VOC Content} = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})}$$

Where:

VOC Content = grams of VOC per liter of coating

$W_s$  = weight of volatiles, in grams

$W_w$  = weight of water, in grams

$W_{ec}$  = weight of exempt compounds, in grams

$V_m$  = volume of coating, in liters

$V_w$  = volume of water, in liters

$V_{ec}$  = volume of exempt compounds, in liters

1.6.1.2 For low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using equation 2 as follows:

$$(2) \quad \text{VOC Content (ls)} = \frac{(W_s - W_w - W_{ec})}{(V_m)}$$

Where:

VOC Content (ls) = the VOC content of a low-solids coating in grams per liter of coating

$W_s$  = weight of volatile, in grams

$W_w$  = weight of water, in grams

$W_{ec}$  = weight of exempt compounds, in grams

$V_m$  = volume of coating, in liters

1.6.2 To determine the physical properties of a coating in order to perform the calculations in 1.6.1, the reference method for VOC content is U.S. EPA Method 24 (40CFR60 Appendix A), incorporated by reference in 1.6.5.11, except as provided in 1.6.3 and 1.6.4. An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91 (Revised February 1996), incorporated by reference in 1.6.5.12.

To determine the VOC content of a coating, the manufacturer may use U.S. EPA Method 24, or an alternative method, as provided in 1.6.3, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g. quality assurance checks, recordkeeping). However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOC content, the Method 24 results will govern, except when an alternative method is approved as specified in 1.6.3. The Secretary may require the manufacturer to conduct a Method 24 analysis.

Exempt compound content shall be determined by SCAQMD Method 303-91 (revised ~~August 1996~~ February 1993), incorporated by reference in 1.6.5.10. The exempt compound Parachlorobenzotrifluoride (PCBTF) shall be determined by BAAQMD Method 41, incorporated by reference in 1.6.5.9. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be determined by BAAQMD Method 43, incorporated by reference in 1.6.5.8.

1.6.3 Other test methods demonstrated to provide results that are acceptable for the purposes of determining compliance with 1.6.2, after review and approval in writing by the Department and by the EPA, also may be used.

1.6.4 Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of U.S. EPA Method 24 (40CFR59, subpart D, Appendix A), incorporated by reference in 1.6.5.13. This method has not been approved for methacrylate multi-component coatings used for purposes other than as traffic marking coatings or for other classes of multi-component coatings.

1.6.5 The following test methods are incorporated by reference herein, and shall be used to test coatings subject to the provisions of this rule:

1.6.5.1 The flame spread index of a fire-retardant coating shall be determined by the ASTM Designation E 84-99, "Standard Test Method for Surface Burning Characteristics of Building Materials," [see "Fire-retardant coating" in Section 1.2 of this regulation].

1.6.5.2 The fire-resistance rating of a fire-resistive coating shall be determined by ASTM Designation E 119-98, "Standard Test Methods for Fire Tests on Building Construction Materials," [see "Fire-resistive coating" in Section 1.2 of this regulation].

1.6.5.3 The gloss of a coating shall be determined by ASTM Designation D 523-89 (1999), "Standard Test Method for Specular Gloss" [see "Flat coating"; "Non-flat coating"; "Non-flat-high gloss coating"; "Quick-dry enamel" in Section 1.2 of this regulation].

1.6.5.4 The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see "Metallic pigmented coating" in Section 1.2 of this regulation].

1.6.5.5 The acid content of a coating shall be determined by ASTM Designation D 1613-96, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products," [see "Pre-treatment wash primer" in Section 1.2 of this regulation].

1.6.5.6 The set-to-touch and dry-to-recoat times of a coating shall be determined by ASTM Designation D 1640-95, "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," [see "Quick-dry enamel" and "Quick-dry primer, sealer, and undercoater" in Section 1.2 of this regulation]. The tack free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM Designation D 1640-95.

1.6.5.7 The chalkiness of a surface shall be determined using ASTM Designation D 4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films," [see "Specialty primer, sealer, and undercoater" in Section 1.2 of this regulation].

1.6.5.8 Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with 1.6 by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996 [see 1.6.2].

1.6.5.9 The exempt compound parachlorobenzotrifluoride (PCBTF), shall be analyzed as an exempt compound for compliance with 1.6 by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, [see 1.6.2].

1.6.5.10 Exempt compound content shall be analyzed by SCAQMD Method 303-91 (Revised 1993), "Determination of Exempt Compounds," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see 1.6.2].

1.6.5.11 The VOC content of a coating shall be determined by U.S. EPA Method 24 as it exists in Appendix A of 40 Code of Federal Regulations (CFR) Part 60, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," [see 1.6.2].

1.6.5.12 The VOC content of coatings may be analyzed by either U.S. EPA Method 24 or SCAQMD Method 304-91 (Revised 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see 1.6.2].

1.6.5.13 The VOC content of methacrylate multi-component coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR part 59, subpart D, Appendix A, "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings," (September 11, 1998), [see 1.6.4].

1.6.5.14 The radiation resistance of a nuclear coating shall be determined by ASTM Method D 4082-89 "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants," see ["Nuclear coating" in Section 1.2 of this regulation].

1.6.5.15 The chemical resistance of nuclear coatings shall be determined by ASTM Method D 3912-80 (reapproved 1989) "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants," [see "Nuclear coating" in Section 1.2 of this regulation].

#### 1.7 Test Method Availability

1.7.1 ASTM methods described in 1.6 can be purchased from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555.

1.7.2 SCAQMD methods described in 1.6 can be purchased from South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934. Telephone (909) 396-2162.

1.7.3 BAAQMD methods described in 1.6 can be purchased from Bay Area Air Quality Management

District (BAAQMD), 939 Ellis Street, San Francisco, California 94109. Telephone (415) 749-4900.

**TABLE 1-1  
VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS**

**Note:** Limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation (as indicated on the label or lid of the coating container), excluding the volume of any water, exempt compounds, or colorant added to tint bases.

<b>COATING CATEGORY</b>	<b>VOC CONTENT LIMIT</b>
Flat Coatings	100
Non-flat Coatings	150
Non-flat - High Gloss Coatings	250
 <b>SPECIALTY COATINGS</b>	
Antenna Coatings	530 *
Anti-fouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
Calcimine Recoaters	475 *
Clear Wood Coatings	
Clear Brushing Lacquers	680
Lacquers (including clear lacquer sanding sealers)	550
Sanding Sealers (other than clear lacquer sanding sealers)	350
Varnishes	350
Conversion Varnish	725 *
Concrete Curing Compounds	350 *
Concrete Surface Retarders	780 *
Dry Fog Coatings	400 *
Faux Finishing Coatings	350
Fire-resistive Coatings	350
Fire-retardant Coatings	
Clear	650
Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-release Compounds	250
Graphic Arts Coatings (Sign Paints)	500 *
High-temperature Coatings	420
Impacted Immersion Coatings	780 *
Industrial Maintenance Coatings	340
Low-solids Coatings	120 * (1)
Magnesite Cement Coatings	450
Mastic Texture Coatings	300 *
Metallic Pigmented Coatings	500
Multi-color Coatings	250
Nuclear Coatings	450 *
Pre-treatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-dry Enamels	250
Quick-dry Primers, Sealers and Undercoaters	200

Recycled Coatings	250
Roof Coatings	250
Rust Preventive Coatings	400 *
Shellacs	
Clear	730
Opaque	550
Specialty Primers, Sealers, and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-indicator Safety Coatings	550
Thermoplastic Rubber Coatings and Mastic	550 *
Traffic Marking Coatings	150 *
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	

\* Indicates limits and definition unchanged from the Federal rule (40CFR59 Subpart D) "National Volatile Organic Compound Emission Standards for Architectural Coatings" which is still in effect.

(1) Units are grams of VOC per liter of coating, *including* water and exempt compounds.

## 2.0 Consumer Products

### 2.1 Applicability

2.1.1 Except as provided in 2.1.2 and 2.1.3, Section 2.0 shall apply to any person who sells, supplies, offers for sale, or manufactures consumer products on and after January 1, 2005 for use in the State of Delaware.

2.1.2 The provisions of Section 2.0 shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale in the State of Delaware, a consumer product that does not comply with the VOC standards specified in 2.3.1, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the State of Delaware, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the State of Delaware. This does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the State of Delaware.

2.1.3 The provisions of Section 2.0 shall not apply to a retailer who sells, supplies or offers for sale in the State of Delaware, a particular consumer product that does not comply with the VOC standards specified in 2.3.1, provided that retailer demonstrates to the satisfaction of the Department that the manufacturer or distributor of that product misled that retailer into believing that the product did comply with the VOC standards specified in 2.3.1.

### 2.2 Definitions

Terms used but not defined in Section 2.0 shall have the meaning given them in Regulation No.1101 or the CAA in that order of priority.

"**ACP (alternative control plan)**" means an emissions averaging program, established and managed by a responsible ACP party which allows manufacturers to sell ACP products in the State of Delaware pursuant to the requirements of Section 2.0.

"**ACP emissions**" means the sum of the VOC emissions from every ACP product subject to an ACP, during the compliance period specified in the ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP \text{ Emissions} = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

$$Emissions = \frac{(VOC \text{ Content}) \times (Enforceable \text{ Sales})}{100}$$

where,

For all products except for charcoal lighter material products:

$$\text{VOC Contents} = \frac{[(B - C) \times 100]}{A}$$

where,

- A = net weight of unit (excluding container and packaging)  
B = total weight of all VOCs per unit  
C = total weight of all exempted VOCs per unit, as specified in 2.3.7 through 2.3.12

For charcoal lighter material products only:

$$\text{VOC Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate}}$$

where,

- Certified Emissions = emissions level for products specified 2.3.4.1  
Certified Use Rate = see "Certified use rate" in Section 2.2 of this regulation

"**ACP limit**" means the maximum allowable ACP emissions during the compliance period specified in an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$\text{ACP Limit} = (\text{Limit})_1 + (\text{Limit})_2 + \dots + (\text{Limit})_N$$

$$\text{Limit} = \frac{(\text{APC Standard}) \times (\text{Enforceable Sales})}{100}$$

where,

- Enforceable Sales = see "Enforceable sales" in Section 2.2 of this regulation  
ACP Standard = see "ACP standard" in Section 2.2 of this regulation  
1,2,...N = each product in an ACP up to the maximum N.

"**ACP product**" means any consumer product subject to the VOC standards specified in 2.3.1, except those products that have been exempted under 2.3, or exempted as innovative products under 2.4 and is covered by an ACP established by the responsible ACP party.

"**ACP reformulation or ACP reformulated**" means the process of reducing the VOC content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

"**ACP standard**" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 2.3.1, whichever is the lesser of the two.

"**ACP VOC standard**" means the maximum allowable VOC content for an ACP product, determined as follows:

- (1) the applicable VOC standard specified in 2.3.1 for all ACP products except for charcoal lighter material;  
(2) for charcoal lighter material products only, the VOC standard for the purposes of Section 2.0 shall be calculated according to the following equation:

$$\text{VOC Standard} = \frac{(0.020 \text{ pound CH}_2 \text{ per start} \times 100)}{\text{Certified Use Rate}}$$

where,

- 0.020 = the certification emissions level as specified in 2.3.1.  
Certified Use Rate = see "Certified use rate" in Section 2.2 of this regulation

"**Adhesive**" means any product that is applied for the purpose of bonding two surfaces together other than by mechanical means. "Adhesive" does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

"**Adhesive remover**" means a product designed exclusively for the removal of adhesives, caulk and other

bonding materials from a specific or a variety of substrates.

**"Aerosol adhesive"** means an aerosol product in which the spray mechanism is permanently housed in a non-refillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

**"Aerosol cooking spray"** means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

**"Aerosol product"** means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. "Aerosol product" does not include pump sprays.

**"Agricultural use"** means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop. "Agricultural use" does not include the sale or use of pesticides in properly labeled packages or containers which are intended for: (and defined for the purposes of this definition only):

- (1) home use which means use in a household or its immediate environment,
- (2) structural pest control which means a use requiring a license under Title 3 **Del.C.** Ch. 12,
- (3) industrial use which means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites, and
- (4) institutional use which means use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

**"Air freshener"** means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. "Air freshener" does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. "Air freshener" does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

**"All other carbon-containing compounds"** means all other compounds which contain at least one carbon atom and are not exempt compounds or "LVP-VOC's."

**"All other forms"** means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, "All other forms" include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

**"Anti-microbial hand or body cleaner or soap"** means a cleaner or soap designed to reduce the level of microorganisms on the skin through germicidal activity. "Anti-microbial hand or body cleaner or soap" includes, but is not limited to, anti-microbial hand or body washes/cleaners, food-handler hand washes, healthcare personnel hand washes, pre-operative skin preparations and surgical scrubs. "Anti-microbial hand or body cleaner or soap" does not include prescription drug products, antiperspirants, astringent/toner, deodorant, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

**"Antiperspirant"** means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

**"Architectural coating"** means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

**"ASTM"** means the American Society for Testing and Materials.

**"Astringent/toner"** means any product not regulated as a drug by the "United States Food and Drug Administration" (FDA) which is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

**"Automotive brake cleaner"** means a cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

**"Automotive hard paste wax"** means a motor vehicle wax or polish which is:

- (1) designed to protect and improve the appearance of motor vehicle painted surfaces;

- (2) a solid at room temperature; and
- (3) contains 0% water by formulation.

**"Automotive instant detailer"** means a product designed for use in a pump spray that is applied to motor vehicle painted surfaces and wiped off prior to being allowed to dry.

**"Automotive rubbing or polishing compound"** means a product designed primarily to remove oxidation, old paint, scratches or "swirl marks", and other defects from motor vehicle painted surfaces without leaving a protective barrier.

**"Automotive wax, polish, sealant or glaze"** means a product designed to seal out moisture, increase gloss, or otherwise enhance motor vehicle painted surfaces. "Automotive wax, polish, sealant or glaze" includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. "Automotive wax, polish, sealant or glaze" does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

**"Automotive windshield washer fluid"** means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. "Automotive windshield washer fluid" does not include fluids placed by the manufacturer in a new vehicle.

**"Bathroom and tile cleaner"** means a product designed to clean tile or surfaces in bathrooms. "Bathroom and tile cleaner" does not include products specifically designed to clean toilet bowls or toilet tanks.

**"Bug and tar remover"** means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (1) biological-type residues such as insect carcasses and tree sap and,
- (2) road grime, such as road tar, roadway paint markings, and asphalt.

**"CARB"** means the California Air Resources Board.

**"Carburetor or fuel-injection air intake cleaners"** means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. "Carburetor or fuel-injection air intake cleaners" does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

**"Carpet and upholstery cleaner"** means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics. "Carpet and upholstery cleaner" includes, but is not limited to, products that make fabric protectant claims. "Carpet and upholstery cleaner" does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

**"Certified use rate"** means the usage level for charcoal lighter materials specified under 2.3.4, expressed to the nearest 0.001 pound of charcoal lighter materials used per start.

**"Charcoal lighter material"** means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. "Charcoal lighter material" does not include any of the following: electrical starters and probes; metallic cylinders using paper tinder; natural gas; propane; and fat wood.

**"Colorant"** means any pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

**"Compliance period"** means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP.

**"Construction, panel, and floor covering adhesive"** means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

- (1) structural and building components that include, but are not limited to, beams, trusses, studs, paneling [drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.], ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

- (2) floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, non-resilient flooring material, mirror tiles and other types of tiles, and artificial grass.

**"Construction, panel, and floor covering adhesive"** does not include floor seam sealer.

**"Consumer"** means any person who purchases, or acquires any consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

**"Consumer product"** means a chemically formulated product used by household and institutional consumers including, but not limited to: antiperspirants; detergents; deodorants; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings.

**"Contact adhesive"** means an adhesive that:

- (1) is designed for application to both surfaces to be bonded together;
- (2) is allowed to dry before the two surfaces are placed in contact with each other;
- (3) forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other; and
- (4) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

**"Contact adhesive"** does not include rubber cements that are primarily intended for use on paper substrates.

**"Container/packaging"** means the part or parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. "Container/packaging" includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

**"Contact person"** means a representative(s) that has been designated by the responsible ACP party for the purpose of reporting or maintaining any information specified in the ACP.

**"Crawling bug insecticide"** means any insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. "Crawling bug insecticide" does not include products designed to be used exclusively on humans or animals, or any house dust mite product. For the purposes of this definition only:

- (1) house dust mite product means a product whose label, packaging or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods, and
- (2) house dust mite means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

**"Date-code"** means the day, month and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

**"Delaware sales"** means the sales (net pounds of product, less packaging and container, per year) in Delaware for a specified calendar year. If direct sales data for the State of Delaware are not available, sales may be estimated by prorating national or regional sales data by population.

**"Deodorant"** means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

**"Device"** means any instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately there from.

**"Disinfectant"** means any product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136, et seq.) and Title 3 **Del.C.** Ch. 12. "Disinfectant" does not include any of the following:

- (1) products designed solely for use on human or animals;
- (2) products designed for agricultural use;
- (3) products designed solely for use in swimming pools, therapeutic tubs, or hot tubs;
- (4) products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

**"Distributor"** means any person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

**"Double-phase aerosol air freshener"** means an aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

**"Dry cleaning fluid"** means any non-aqueous liquid product designed and labeled exclusively for use on: fabrics which are labeled "for dry clean only", such as clothing or drapery; or S-coded fabrics. "Dry cleaning fluid" includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. "Dry cleaning fluid" does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, S-coded fabric means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.

**"Dusting aid"** means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. "Dusting aid" does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

**"Electronic cleaner"** means a product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

**"Enforceable sales"** means the total amount of an ACP product sold for use in the State of Delaware, during the applicable compliance period specified in the ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

**"Enforceable sales record"** means a written, point-of-sale record or any other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the State of Delaware during the applicable compliance period can be accurately documented. For the purposes of Section 2.0, "Enforceable sales records" include, but are not limited to, the following types of records:

(1) accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

(2) accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify any data comprising such summaries is recorded by the responsible ACP party;

(3) any other accurate product sales records approved by the Department as meeting the criteria specified in "Enforceable sales record" in Section 2.2 of this regulation.

**"Engine degreaser"** means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

**"Exempt compound"** means any carbon-containing compound listed as an exception to the definition of VOC's in Regulation No. 1101.

**"Fabric protectant"** means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. "Fabric protectant" does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

**"Facial cleaner or soap"** means a cleaner or soap designed primarily to clean the face. "Facial cleaner or soap" includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. "Facial cleaner or soap" does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

**"Fat wood"** means pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. "Fat wood" does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

**"Flea and tick insecticide"** means any insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. "Flea and tick insecticide" does not include products that are designed to be used exclusively on humans or animals and their bedding.

**"Flexible flooring material"** means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

**"Floor polish or wax"** means a wax, polish, or any other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. "Floor polish or wax" does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

**"Floor seam sealer"** means any product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

**"Floor wax stripper"** means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. "Floor wax

stripper" does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

**"Flying bug insecticide"** means any insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. "Flying bug insecticide" does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, moth-proofing product means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

**"Fragrance"** means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

**"Furniture maintenance product"** means a wax, polish, conditioner, or any other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. "Furniture maintenance product" does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

**"Furniture coating"** means any paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

**"Gel"** means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

**"General purpose adhesive"** means any non-aerosol adhesive designed for use on a variety of substrates. "General purpose adhesive" does not include:

- (1) contact adhesives;
- (2) construction, panel, and floor covering adhesives;
- (3) adhesives designed exclusively for application on one specific category of substrates (i.e.,

substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or

(4) adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

**"General purpose cleaner"** means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. "General purpose cleaner" includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

**"General purpose degreaser"** means any product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. "General purpose degreaser" does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

- (1) sold exclusively to establishments which manufacture or construct goods or commodities; and
- (2) labeled "not for retail sale".

Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

**"General-use hand or body cleaner or soap"** means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. "General-use hand or body cleaner or soap" includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. "General-use hand or body cleaner or soap" does not include prescription drug products, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including anti-microbial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

**"Glass cleaner"** means a cleaning product designed primarily for cleaning surfaces made of glass. "Glass cleaner" does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

**"Gross Delaware sales"** means the estimated total State of Delaware sales of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party determines will provide an accurate State of Delaware sales estimate:

- (1) apportionment of national or regional sales of the ACP product to State of Delaware sales,

determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the State of Delaware's current population; or

(2) any other documented method which provides an accurate estimate of the total current State of Delaware sales of the ACP product.

**"Hair mousse"** means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

**"Hair shine"** means any product designed for the primary purpose of creating a shine when applied to the hair. "Hair shine" includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. "Hair shine" does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

**"Hair styling gel"** means a high viscosity, often gelatinous, product that contains a resin and is designed for application to hair to aid in styling and sculpting of the hair coiffure.

**"Hair spray"** means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

**"Heavy-duty hand cleaner or soap"** means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. "Heavy-duty hand cleaner or soap" does not include prescription drug products, anti-microbial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

**"Herbicide"** means a pesticide product designed to kill or retard a plant's growth, but excludes products that are; for agricultural use, or restricted materials that require a permit for use and possession.

**"High volatility organic compound (HVOC)"** means any volatile organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20°C.

**"Household product"** means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

**"Insecticide"** means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (1) for agricultural use;
- (2) for a use which requires a structural pest control license under Title 3 **Del.C.** Ch. 12; or
- (3) restricted materials that require a permit for use and possession.

**"Insecticide fogger"** means any insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

**"Institutional product"** or **"Industrial and institutional (I&I) product"** means a consumer product that is designed for use in the maintenance or operation of an establishment that:

- (1) manufactures, transports, or sells goods or commodities, or provides services for profit; or
- (2) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. "Institutional product" does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

**"Label"** means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon any consumer product or consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

**"Laundry prewash"** means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents and/or provides specialized performance.

**"Laundry starch product"** means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. "Laundry starch product" includes, but is not limited to, fabric finish, sizing, and starch.

**"Lawn and garden insecticide"** means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

**"Liquid"** means a substance or mixture of substances which is capable of a visually detectable flow as

determined under ASTM D-4359-90, incorporated by reference in 2.8.3. "Liquid" does not include powders or other materials that are composed entirely of solid particles.

**"Lubricant"** means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. "Lubricant" does not include:

- (1) automotive power steering fluids;
- (2) products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes;
- (3) two cycle oils or other products designed to be added to fuels;
- (4) products for use on the human body or animals; or products that are
  - (a) sold exclusively to establishments which manufacture or construct goods or commodities, and
  - (b) labeled "not for retail sale".

**"LVP content"** means the total weight, in pounds, of LVP-VOC compounds in an ACP product multiplied by 100 and divided by the product's total net weight, in pounds, excluding container and packaging, expressed to the nearest 0.1 percent.

**"LVP-VOC"** means a low vapor pressure chemical compound or mixture that contains at least one carbon atom and meets one of the following:

- (1) has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310, incorporated by reference in 2.8.1; or
- (2) is a chemical "compound" with more than 12 carbon atoms, or a chemical "mixture" comprised solely of "compounds" with more than 12 carbon atoms, and the vapor pressure is unknown; or
- (3) is a chemical "compound" with a boiling point greater than 216°C, as determined by CARB Method 310, incorporated by reference in 2.8.1; or
- (4) is the weight percent of a chemical "mixture" that boils above 216°C, as determined by CARB Method 310, incorporated by reference in 2.8.1.

For the purposes of the definition of LVP-VOC, chemical compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substrate comprised of two or more chemical compounds.

**"Manufacturer"** means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

**"Medicated astringent/medicated toner"** means any product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores. "Medicated astringent/medicated toner" includes, but is not limited to, clarifiers and substrate-impregnated products. "Medicated astringent/medicated toner" does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

**"Medium volatility organic compound (MVOC)"** means any volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

**"Metal polish/cleanser"** means any product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To improve the appearance means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. "Metal polish/cleanser" includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. "Metal polish/cleanser" does not include: automotive wax, polish, sealant or glaze; wheel cleaner; paint remover or stripper; products designed and labeled exclusively for automotive and marine detailing; or, products designed for use in degreasing tanks.

**"Missing data days"** means the number of days in a compliance period for which the responsible ACP party has failed to record the required enforceable sales or VOC content data, as specified in the ACP.

**"Mist spray adhesive"** means any aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

**"Multi-purpose dry lubricant"** means any lubricant which is:

- (1) designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("Teflon") on surfaces; and
- (2) designed for general purpose lubrication, or for use in a wide variety of applications.

**"Multi-purpose lubricant"** means any lubricant designed for general purpose lubrication, or for use in a wide variety of applications. "Multi-purpose Lubricant" does not include: multi-purpose dry lubricants; penetrants; or, silicone-based multi-purpose lubricants.

**"Multi-purpose solvent"** means any organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. "Multi-purpose solvent" includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. "Multi-purpose solvent" does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

**"Nail polish"** means any clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats and top coats.

**"Nail polish remover"** means a product designed to remove nail polish and coatings from fingernails or toenails.

**"Non-aerosol product"** means any consumer product that is not dispensed by a pressurized spray system.

**"Non-carbon containing compound"** means any compound which does not contain carbon atoms.

**"Non-resilient flooring"** means flooring of a mineral content which is not flexible. "Non-resilient Flooring" includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

**"Non-selective terrestrial herbicide"** means a terrestrial herbicide product that is toxic to plants without regard to species.

**"One-product business"** means a responsible ACP party which sells, supplies, offers for sale, or manufactures for use in the State of Delaware:

(1) only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 2.3; or

(2) only one distinct ACP product line subject to the requirements of 2.3, in which all the ACP products belong to the same product category(ies) and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

**"OTC state"** means any of the following, considered to be in the Ozone Transport Region as defined in the CAA and members of the Ozone Transport Commission (OTC): Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia and Vermont.

**"Oven cleaner"** means any cleaning product designed to clean and to remove dried food deposits from oven interiors.

**"Paint"** means any pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

**"Paint remover or stripper"** means any product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. "Paint remover or stripper" does not include:

(1) multi-purpose solvents;

(2) paint brush cleaners;

(3) products designed and labeled exclusively to remove graffiti; and

(4) hand cleaner products that claim to remove paints and other related coating from skin.

**"Penetrant"** means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. "Penetrant" does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

**"Pesticide"** means any substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include any substance, mixture of substances, or device which the United States Environmental Protection Agency does not consider a pesticide. (EPA Office of Pesticide Programs or see <http://www.epa.gov/oppmsd1/PPISdata/index.html>.)

**"Pre-ACP VOC content"** means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the ACP was established by the manufacturer, based on available Delaware sales records, or other accurate records, whichever yields the lowest VOC content for the product. If a valid ACP is in force in another state, product data from that state may be used if it yields the lowest VOC content for the product.

**"Principal display panel or panels"** means that part, or those parts of a label that are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the "Principal display panel" shall pertain to all such "Principal display panels".

**"Product brand name"** means the name of the product exactly as it appears on the principal display panel of the product.

**"Product category"** means the applicable category which best describes the product as listed in 2.2.

**"Product form"** means the form that most accurately describes the products' dispensing form including aerosols, gels, solids liquids and pump sprays.

**"Product line"** means a group of products of identical form and function belonging to the same product category(ies).

**"Propellant"** means a liquefied or compressed gas that is used in whole or in part, such as a co-solvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

**"Pump spray"** means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

**"Reconcile or reconciliation"** means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

**"Reconciliation of shortfalls plan"** means the plan to be implemented by the responsible ACP party when shortfalls have occurred, pursuant to 2.10.3.7.10.

**"Responsible party"** means the company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was "manufactured for" or "distributed by", as noted on the label.

**"Responsible ACP party"** means the company, firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the "Responsible ACP party" is the party which the ACP product was "manufactured for" or "distributed by", as noted on the label.

**"Restricted materials"** means pesticides established as restricted materials under Title 3 **Del.C.** Ch. 12 or under the Federal Insecticide, Fungicide and Rodenticide Act (7 U. S. C. Section 136 et seq.)

**"Retailer"** means any person who sells, supplies, or offers consumer products for sale directly to consumers.

**"Retail outlet"** means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

**"Roll-on product"** means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

**"Rubber and vinyl protectant"** means any product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. "Rubber and vinyl protectant" does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

**"Rubbing alcohol"** means any product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

**"SCAQMD"** means the South Coast Air Quality Management District, a part of the California Air Resources Board which is responsible for regulation of air quality in the State of California.

**"Sealant and caulking compound"** means any product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. "Sealant and caulking compound" does not include:

- (1) roof cements and roof sealants;
- (2) insulating foams;
- (3) removable caulking compounds;
- (4) clear/paintable/water resistant caulking compounds;
- (5) floor seam sealers;
- (6) products designed exclusively for automotive uses; or
- (7) sealers that are applied as continuous coatings.

For the purposes of this definition only, removable caulking compound means a compound which temporarily seals windows or doors for three to six month time intervals, and clear/paintable/water resistant caulking compounds

means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

**"Semisolid"** means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

**"Shaving cream"** means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

**"Shortfall"** means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. "Shortfall" does not include emissions occurring prior to the date the ACP was established.

**"Silicone-based multi-purpose lubricant"** means any lubricant which is: (i) designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and (ii) designed and labeled for general purpose lubrication, or for use in a wide variety of applications. "Silicone-based multi-purpose lubricant" does not include products designed and labeled exclusively to release manufactured products from molds.

**"Single-phase aerosol air freshener"** means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

**"Small business"** means an independently owned and operated business with less than 100 employees as defined by the Administrator of the federal Small Business Administration pursuant to U. S. Public Law 85-536.

**"Solid"** means a substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90, incorporated by reference in 2.8.3.

**"Special purpose spray adhesive"** means an aerosol adhesive that meets any of the following definitions:

(1) "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

(2) "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees F.

(3) "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least five percent, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-96, incorporated by reference in 2.8.5, or from product formulation data.

(4) "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

(5) "Automotive headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

(6) "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

(7) "Laminate repair/edgebanding adhesive" means an aerosol adhesive designed for:

(a) touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or,

(b) for touch-up, repair, or attachment of edgebanding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition "high pressure laminate" means sheet materials which consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees F, and at pressures between 1,000 and 1,400 psi.

**"Spot remover"** means any product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. "Spot remover" does not include dry cleaning fluid, laundry pre-wash, carpet and upholstery cleaner, or multi-purpose solvent.

**"Spray buff product"** means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

**"Stick product"** means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"**Structural waterproof adhesive**" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type 1, Grade A), and MIL-A-4605 (Type A, Grade A and Grade C).

"**Surplus reduction**" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. "Surplus reduction" does not include emissions occurring prior to the date the ACP was established by the manufacturer.

"**Surplus trading**" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"**Terrestrial**" means to live on or grow from land.

"**Tire sealant and inflators**" means any pressurized product that is designed to temporarily inflate and seal a leaking tire.

"**Total maximum historical emissions (TMHE)**" means the total VOC emissions from all ACP products for which the responsible ACP party has failed to record the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to record the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

$$MHE = \frac{(\text{Highest VOC Content} \times \text{Highest Sales}) \times \text{Missing Data Days}}{100 \times 365}$$

where,

Highest

VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording VOC content data (for any portion of the compliance period), as specified in the ACP, or the current actual VOC content, if the responsible ACP party has recorded all required VOC content data (for the entire compliance period), as specified in the ACP.

Highest Sales = the maximum one-year gross State of Delaware sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for recording enforceable sales records (for any portion of the compliance period), as specified in the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has recorded all required enforceable sales records (for the entire compliance period), as specified in the ACP.

Missing Data Days = see "Missing data days" in Section 2.2 of this regulation

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to record the required enforceable sales or VOC content data as specified in the ACP.

"**Type A propellant**" means a compressed gas such as CO<sub>2</sub>, N<sub>2</sub>, N<sub>2</sub>O, or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"**Type B propellant**" means any halocarbon which is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"**Type C propellant**" means any propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"**Undercoating**" means any aerosol product designed to impart a protective, non-paint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. "Undercoating" includes, but is not limited to, rubberized, mastic, or asphaltic products.

"**Usage directions**" means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

"**VOC content**" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 2.8.1 and 2.8.2.

For charcoal lighter material products only,

$$\text{VOC Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate}}$$

where,

Certified

Emissions = emissions level for products specified in 2.3.4

Certified

Use Rate = usage level for products specified in 2.3.4

**"Wasp and hornet insecticide"** means any insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects, or their hiding place.

**"Waterproofer"** means a product designed and labeled exclusively to repel water from fabric or leather substrates. "Waterproofer" does not include fabric protectants.

**"Wax"** means a material or synthetic thermoplastic substance generally composed of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). "Wax" includes, but is not limited to, substances derived from the secretions of plants and animals such as caruba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

**"Web spray adhesive"** means any aerosol adhesive which is not a mist spray or special purpose spray adhesive.

**"Wood floor wax"** means wax-based products for use solely on wood floors.

**"Working day"** means any day between Monday through Friday, inclusive, except for days that are federal holidays.

### 2.3 Standards and Exemptions

2.3.1 Except as provided in 2.1 (Applicability), 2.4 (Innovative Products), 2.7 (Variances), and 2.10 (Alternative Control Plan),

2.3.1.1 no person shall sell, supply, or offer for sale in the State of Delaware any consumer product manufactured on and after January 1, 2005 which contains VOC's in excess of the limits shown in Table 2-1 and

2.3.1.2 no person shall manufacture any consumer product on and after January 1, 2005 for use in the State of Delaware which contains volatile organic compounds in excess of the limits shown in Table 2-1.

2.3.2 For products that are diluted prior to use, the following shall apply:

2.3.2.1 The limits specified in Table 2-1 shall apply to consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, only after the minimum recommended dilution has taken place. Minimum recommended dilution, for the purposes of 2.3.2.1, shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2.3.2.2 The limits specified in Table 2-1 shall apply to consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use only after the maximum recommended dilution has taken place.

2.3.3 The effective date of the VOC standards specified in Table 2-1, for those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136 et seq.), is January 1, 2006. Such products also must be registered under Title 3 **Del.C.** Ch. 12.

2.3.4 The following requirements shall apply to all charcoal lighter material products as defined in "Charcoal lighter material" in Section 2.2 of this regulation:

2.3.4.1 Regulatory standards.

No person shall sell, supply, or offer for sale on and after January 1, 2005 any charcoal lighter material product unless at the time of the transaction:

2.3.4.1.1 The manufacturer or distributor of the charcoal lighter material has performed the requisite testing to demonstrate that VOC emissions from ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start ("certified emissions"), using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (the "SCAQMD Rule 1174 Testing Protocol"), incorporated by reference in 2.8.4.1. The provisions

relating to LVP-VOC in "LVP-VOC" in Section 2.2 of this regulation and 2.3.10 shall not apply to any charcoal lighter material subject to the requirements of 2.3.1 and 2.3.4. The Department may approve alternative test procedures which are shown to provide equivalent results to those obtained using the SCAQMD Rule 1174 Testing Protocol 2.8.4.

2.3.4.1.2 The charcoal lighter material meets the formulation criteria and other conditions specified in an applicable ACP.

2.3.4.2 The Department may, at any time, request a manufacturer to submit information concerning the charcoal lighter material manufactured for use in the State of Delaware. The manufacturer shall respond within 30 days, in writing, and shall include, at a minimum, the following:

2.3.4.2.1 The results of testing conducted pursuant to the procedures specified in SCAQMD Rule 1174 Testing Protocol 2.8.4.

2.3.4.2.2 The exact text and/or graphics that appear on the charcoal lighter material's principal display panel, label, and any accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the SCAQMD Rule 1174 Testing Protocol 2.8.4 for that product, unless:

2.3.4.2.2.1 the charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

2.3.4.2.2.2 the charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

2.3.4.2.3 For a charcoal lighter material which meets the criteria specified in 2.3.4.2.2.1, the usage instructions shall accurately reflect the quantity of charcoal lighter material used in the SCAQMD Rule 1174 Testing Protocol 2.8.4 for that product.

2.3.4.2.4 Any physical property data, formulation data, or other information required by the Department for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified in an ACP.

2.3.4.2.5 Possession of a currently effective certification by the CARB under the Consumer Products provisions of Title 17 of the California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Article 2, Section 94509(h), or from a state with a similar certification procedure, should be noted and a copy of the applicable certification decision (i.e., the Executive Order) should be included.

2.3.5 The following requirements for aerosol adhesives shall apply:

2.3.5.1 In order to qualify as a special purpose spray adhesive the product must meet one or more of the definitions specified in "Special purpose spray adhesive" in Section 2.2 of this regulation, but if the product label indicates that the product is suitable for use on any substrate or application not listed in "Special purpose spray adhesive", then the product shall be classified as either a web spray adhesive or a mist spray adhesive.

2.3.5.2 If a product meets more than one of the definitions specified in "Special purpose spray adhesive" in Section 2.2 of this regulation for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in Table 2-1.

2.3.6 No person shall sell, supply, offer for sale, or manufacture for use in the State of Delaware any floor wax stripper unless the following requirements are met:

2.3.6.1 The label of each non-aerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3 percent by weight or less.

2.3.6.2 If a non-aerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent by weight or less.

2.3.6.3 The terms "light build-up", "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

**NOTE:** ITEMS 2.3.7 THROUGH 2.3.15 CONSTITUTE MISCELLANEOUS EXEMPTIONS

2.3.7 The medium volatility organic compound (MVOC) content standards specified in 2.3.1 for antiperspirants or deodorants, shall not apply to ethanol.

2.3.8 The VOC limits specified in 2.3.1 shall not apply to fragrances up to a combined level of 2 percent by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant.

2.3.9 The requirements of 2.3.1 for antiperspirants or deodorants shall not apply to those volatile

organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20° C.

2.3.10 The VOC limits specified in 2.3.1 shall not apply to any LVP-VOC.

2.3.11 The VOC limits specified in 2.3.1 shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under Regulation No. 1101 or exempted under 2.3.10.

2.3.12 The VOC limits specified in 2.3.1 shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

2.3.13 VOC limits specified in 2.3.1 shall not apply to adhesives sold in containers of 1 fluid ounce or less.

The VOC limits specified in 2.3.1 for contact adhesive do not apply to units of product, less packaging, which consist of more than one gallon. [The VOC limits specified in 2.3.1 for construction, panel and floor covering adhesive and for general purpose adhesive do not apply to units of product, less packaging, which consist of more than one pound and more than 16 fluid ounces.]

2.3.14 The VOC limits specified in 2.3.1 shall not apply to bait station insecticides. For the purpose of Section 2.0, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5 percent active ingredients.

2.3.15 Section 2.0 does not apply to sealant and caulking compound in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces.

2.4 Innovative Products

2.4.1 Any manufacturer of consumer products granted an Innovative Product Exemption (IPE) by the CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5 Article 1, Section 94503.5 of Title 17 of the California Code of Regulations, or granted an IPE by any OTC state, shall be exempt from the standards in 2.3.1 (Table 2-1) for the period of time that said IPE remains in effect, provided that all consumer products within said IPE are contained in 2.3.1 Table 2-1 of this Section. Any manufacturer claiming an exemption on this basis shall submit to the Department a copy of the IPE decision (i.e., the Executive Order or other comparable state action) including all conditions applicable to the exemption. The Department reserves the right to refuse to honor, revoke or otherwise cancel an IPE which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an IPE. Only the following provisions of 2.4.2 shall apply to IPE's exempted under 2.4.2.7, 2.4.2.8, and 2.4.2.9.

2.4.2 Manufacturers of consumer products may seek an IPE in accordance with the following criteria:

2.4.2.1 The Department shall exempt a consumer product from the VOC limits specified in 2.3.1 if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

2.4.2.1.1 the VOC emissions from a representative consumer product which complies with the VOC limits specified in 2.3.1; or,

2.4.2.1.2 the calculated VOC emissions from a non-complying representative product, if the product had been reformulated to comply with the VOC limits specified in 2.3.1. VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

where:

$E_R$  = The VOC emissions from the non-complying representative product, had it been reformulated.

$E_{NC}$  = The VOC emissions from the non-complying representative product in its current formulation.

$VOC_{STD}$  = the VOC limit specified in 2.3.1 (Table 2-1).

$VOC_{NC}$  = the VOC content of the non-complying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Department.

2.4.2.2 For the purposes 2.4.2.1, representative consumer product means a consumer product which meets all of the following criteria:

2.4.2.2.1 The representative consumer product shall be subject to the same VOC limit in 2.3.1 as the innovative product.

2.4.2.2.2 The representative consumer product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

2.4.2.2.3 The representative consumer product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

2.4.2.3 A manufacturer shall apply in writing to the Department for any exemption claimed under 2.4.2.1. The application shall include supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage.

In addition, the applicant must provide any information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at Title 29 **Del.C.** Ch. 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at Title 29 **Del.C.** Ch. 100, Section 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the DNREC FOIA regulation which can be obtained from the Department.

If a manufacturer has been refused an IPE or had an IPE revoked by the CARB or any OTC state, details shall be included in the application.

2.4.2.4 Within 30 days of receipt of the exemption application the Department shall determine whether an application is complete.

2.4.2.5 Within 90 days after an application has been deemed complete, the Department shall determine whether, under what conditions, and to what extent, an exemption from the requirements of 2.3.1 will be permitted. The applicant and the Department may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Department shall notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in 2.4.2.1, and that such emissions reductions can be enforced.

2.4.2.6 In granting an exemption for a product the Department shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Department to be necessary. The Department also shall specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling and laboratory procedures.

2.4.2.7 For any product for which an exemption has been granted pursuant to 2.4.1 or 2.4.2, the manufacturer shall notify the Department in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Department within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Department in support of the exemption application.

2.4.2.8 If the VOC limits specified in 2.3.1 are lowered for a product category through any subsequent rule making, all innovative product exemptions granted for products in the product category, except as provided in 2.4.2.8, shall have no force and effect as of the effective date of the modified VOC standard. This shall not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of such limits.

2.4.2.9 If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in 2.4.2.1, the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria. The Department shall not modify or revoke an exemption without first affording the applicant an opportunity to appeal the Department's decision to the Secretary, in writing.

## 2.5 Administrative Requirements

2.5.1 Each manufacturer of a consumer product subject to Section 2.0 shall clearly display on each consumer product container or package, the day, month, and year when the product was manufactured, or a code indicating such date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cover/cap) without disassembling any part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in 2.3.1. No person shall erase, alter, deface or otherwise remove or make illegible any date or date-code from any regulated product container. The requirements of this provision shall not apply to products containing VOCs at 0.10% by weight or less. The requirements of 2.5.1 shall not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA; 7 U.S.C. Section 136 (et seq.)], or Title 3 **Del.C.** Ch. 12.

2.5.2 If a manufacturer uses a code indicating the date of manufacture, for any consumer product subject to 2.3.1, an explanation of the code must be filed with the Department no later than twelve months prior to the effective date of the applicable standard specified in 2.3.1.

2.5.3 Notwithstanding the definition of product category in 2.2, if anywhere on the principal display panel of any consumer product, any representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in 2.3.1, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

2.5.4 Additional Labeling Requirements for Aerosol Adhesives.

2.5.4.1 In addition to the requirements specified in 2.5.1, 2.5.2, and 2.5.3, both the manufacturer and responsible party for each aerosol adhesive product subject to Section 2.0 shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005.

2.5.4.1.1 The aerosol adhesive category as specified in 2.3.1(Table 2-1) or an abbreviation of the category shall be displayed.

2.5.4.1.2 The applicable VOC standard for the product that is specified in 2.3.1(Table 2-1), expressed as a percentage by weight, shall be displayed unless the product is included in an ACP, as provided in 2.10 and the product exceeds the applicable VOC standard.

If the product is included in an ACP, and the product exceeds the applicable VOC standard specified in 2.3.1(Table 2-1), the product shall be labeled with the term ACP or ACP product.

2.5.4.1.3 If the product is classified as a special purpose spray adhesive, the applicable substrate and/or application or an abbreviation of the substrate/application that qualifies the product as special purpose shall be displayed.

2.5.4.1.4 If the manufacturer or responsible party uses an abbreviation as allowed by 2.5.4.1.1, an explanation of the abbreviation must be filed with the Department before the abbreviation is used.

2.5.4.2 The information required in 2.5.4.1, shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of 2.5.4.2, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

2.6 Reporting Requirements

2.6.1 Upon 90 days written notice, the Department may require any responsible party to report information for any consumer product or products the Department may specify including, but not limited to, all or part of the following information:

2.6.1.1 the name of the responsible party and the party's address, telephone number, and designated contact person;

2.6.1.2 any claim of confidentiality which shall be handled as specified in 2.10.12;

2.6.1.3 the product brand name for each consumer product and upon request by the Department, the product label;

2.6.1.4 the product category to which the consumer product belongs;

2.6.1.5 the applicable product form(s) listed separately;

2.6.1.6 an identification of each product brand name and form as a household product, I&I product, or both;

2.6.1.7 separate Delaware sales in pounds per year, to the nearest pound, and the method used to calculate Delaware sales for each product form;

2.6.1.8 for reports submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All information from both companies shall be submitted by the date specified in 2.6.1;

2.6.1.9 for each product brand name and form, the net percent by weight of the total product, less container and packaging, comprised of the following, rounded to the nearest one tenth of a percent (0.1%):

- 2.6.1.9.1 Total exempt compounds
- 2.6.1.9.2 Total LVP-VOCs that are not fragrances
- 2.6.1.9.3 Total all other carbon containing compounds that are not fragrances
- 2.6.1.9.4 Total all non-carbon containing compounds
- 2.6.1.9.5 Total fragrance
- 2.6.1.9.6 For products containing greater than two percent by weight fragrance:
  - 2.6.1.9.6.1 the percent of fragrance that are LVP-VOCs, and
  - 2.6.1.9.6.2 the percent of fragrance that are all other carbon containing

compounds

2.6.1.9.7 Total paradichlorobenzene;

2.6.1.10 for each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

- 2.6.1.10.1 Each exempt compound
- 2.6.1.10.2 Each LVP-VOC that is not a fragrance;

2.6.1.11 if applicable, the weight percent comprised of propellant for each product; and

2.6.1.12 if applicable, an identification of the type of propellant (Type A, Type B, Type C, or a blend of the different types).

2.6.2 All information submitted by responsible parties pursuant to 2.6 shall be handled in accordance with confidentiality procedures which are specified in 2.10.12.

## 2.7 Variances

2.7.1 Any person who cannot comply with the requirements set forth in 2.3, because of extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall set forth:

2.7.1.1 the specific grounds upon which the variance is sought;

2.7.1.2 the proposed date(s) by which compliance with the provisions of 2.3 will be achieved;

and

2.7.1.3 a compliance report reasonably detailing the method(s) by which compliance will be achieved.

2.7.2 Upon receipt of a variance application containing the information required in 2.7.1, the Department shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in 2.3 is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing also shall be submitted for publication in the Delaware Register and sent to every person who requests such notice, not less than 30 days prior to the hearing. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. At least 30 days prior to the hearing, the variance application shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

The applicant may wish to have some information treated as confidential. Procedures for establishing confidentiality are specified in 2.10.12. The Department may consider such confidential information in reaching a decision on a variance application.

2.7.3 No variance shall be granted unless all of the following findings are made:

2.7.3.1 that, because of reasons beyond the reasonable control of the applicant, requiring compliance with 2.3 would result in extraordinary economic hardship;

2.7.3.2 that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance; and

2.7.3.3 that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

2.7.4 Any variance order shall specify a final compliance date by which the requirements of 2.3 will

be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the State of Delaware's environmental regulations .

2.7.5 A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.

2.7.6 Upon the application of any person, the Department may review, and for good cause, modify or revoke a variance from requirements of 2.3 after holding a public hearing in accordance with provisions of the **Delaware Code**.

## 2.8 Test Methods

2.8.1 Testing to determine compliance with the requirements of Section 2.0, shall be performed using CARB Method 310, "Determination of Volatile Organic Compound (VOC) in Consumer Products", adopted September 25, 1997, and amended on September 3, 1999, which is incorporated herein by reference. This method includes a number of ASTM methods.

Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval by the Department.

2.8.2 VOC content determinations using product formulation and records. Testing to determine compliance with the requirements of Section 2.0 also may be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

2.8.2.1 Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records, for each day of production, of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

2.8.2.2 For the purposes of 2.8.2, the VOC content shall be calculated according to the following equation:

$$VOC\ Content = [(B - C) / A] \times 100$$

where,

A	=	total net weight of unit (excluding container and packaging)
B	=	total weight of all VOCs per unit
C	=	total weight of VOCs exempted under 2.3, per unit

2.8.2.3 If product records appear to demonstrate compliance with VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over product records and may be used to establish a violation of the requirements of Section 2.0.

2.8.3 Determination of liquid or solid. Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid", incorporated by reference herein [see "Liquid" and "Solid" in Section 2.2 of this regulation].

2.8.4 Compliance determinations for charcoal lighter material products.

2.8.4.1 Testing to determine compliance with certification requirements for charcoal material shall be performed using procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), incorporated by reference herein.

2.8.4.2 Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-00a (August 10, 2000), "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure", incorporated by reference in 2.8.1.

2.8.5 Testing to determine plasticizer in flexible vinyl adhesives [see "Flexible vinyl adhesive" within "Special purpose spray adhesive" in Section 2.2 of this regulation] shall be performed using ASTM E260-96 (reapproved 2001) "Standard Practice for Packed Column Gas Chromatography", incorporated herein by reference.

2.8.6 No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other test, processes, or records used in connection with product manufacture.

2.8.7 Test Method Availability.

2.8.7.1 CARB Method 310 is available on the web at  
<http://www.arb.ca.gov/testmeth/cptm/cptm.htm>

2.8.7.2 ASTM methods can be purchased from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555.

2.8.7.3 SCAQMD methods can be purchased from South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934. Telephone (909) 396-2162.

#### 2.9 Severability

Each part of Section 2.0 shall be deemed severable, and in the event that any part of Section 2.0 is held to be invalid, the remainder of Section 2.0 shall continue in full force and effect.

#### 2.10 Alternative Control Plan

The purpose of 2.10 is to provide an alternative method [an alternative control plan (ACP)] to comply with the Table 2-1 limits specified in 2.3.1. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified herein. Only responsible ACP parties for consumer products may establish an ACP.

2.10.1 Except as provided in 2.10.2, any manufacturer of consumer products, granted an ACP agreement by the CARB under provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations, or granted an ACP agreement by any OTC state, shall be exempt from the Table 2-1 limits specified in 2.3 for the period of time that said ACP agreement remains in effect, provided that all ACP products within said ACP agreement are contained in Table 2-1. Any manufacturer claiming such an ACP agreement shall submit to the Department a copy of the ACP decision (i.e., the Executive Order or other comparable state action), including all conditions applicable to the exemption. The Department reserves the right to refuse to honor, revoke or otherwise cancel an ACP which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an ACP. Holders of other state ACP agreements, operating in Delaware, shall be subject to all the provisions of 2.10.3 through 2.10.13.

2.10.2 Manufacturers of consumer products granted an ACP under the ACP provision in Subchapter 8.5, Article 4, Sections 9450-94555, of Title 17 of the California Code of Regulations, based on California specific data, or that have been granted an ACP agreement by any OTC state based on state specific data, or that have not been granted an ACP agreement by the CARB or any OTC state] may establish an ACP in accordance with 2.10.2 through 2.10.13. It is not necessary to apply to the Department for authorization. The manufacturer shall submit the information requested in 2.10.5.1 upon establishing the ACP and from time to time, the Department may require additional reporting as specified in 2.10.5. The Department reserves the right to refuse to honor, revoke or otherwise cancel an ACP established under 2.10.2 which it believes has been misrepresented or does not meet the criteria for establishing or maintaining an ACP. Manufacturers of consumer products whose application to CARB or any OTC state for an ACP was refused or whose ACP agreement was revoked, cancelled or otherwise terminated prior to the specified termination date, shall notify the Department of the circumstances before establishing an ACP for Delaware sales. Decisions by CARB or any OTC state to not approve an ACP application or to cancel or terminate an ACP prior to the specified termination date will be considered in taking any action in Delaware.

#### 2.10.3 Requirements of an ACP.

To establish an ACP the responsible ACP party shall develop a file of information containing all of the following, which shall be kept current and available to the Department upon request as specified in 2.10.4.2 and maintained for at least three years after such records are generated:

2.10.3.1 an identification of the contact persons, phone numbers, names and addresses of the responsible ACP party;

2.10.3.2 a statement of whether the responsible ACP party is a one-product business, as defined in "One-product business" or a small business as defined in "Small business" in Section 2.2 of this regulation;

2.10.3.3 a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category(ies) for each distinct ACP product that is proposed for inclusion in the ACP;

2.10.3.4 for each proposed ACP product identified in 2.10.3.3 a supported statement that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in 2.10.3.4.5. To support this statement, the responsible ACP party shall include all of the following in the file:

2.10.3.4.1 the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable

sales;

2.10.3.4.2 the enforceable sales of each product using enforceable sales records as defined in "Enforceable sales record" in Section 2.2 of this regulation;

2.10.3.4.3 support the validity of the enforceable sales with enforceable sales records provided by the contact persons or the responsible ACP party;

2.10.3.4.4 calculate the percentage of the gross Delaware sales, as defined in "Gross Delaware sales" which is comprised of enforceable sales;

2.10.3.4.5 determine which ACP products have enforceable sales which are 75.0% or more of the gross Delaware sales. Only ACP products meeting this criteria shall be allowed to be sold in the State of Delaware under an ACP.

2.10.3.5 for each of the ACP products identified in 2.10.3.4.5, the inclusion of the following:

2.10.3.5.1 legible copies of the existing labels for each product;

2.10.3.5.2 the VOC content and LVP content for each product reported for two different periods, as follows:

2.10.3.5.2.1 the VOC and LVP contents of the product at the time the ACP is established, and

2.10.3.5.2.2 any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of establishing the ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent (+10.0%) of the VOC or LVP contents reported in 2.10.3.5.2.1;

2.10.3.6 a written commitment obligating the responsible ACP party to date-code every unit of each ACP product included in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than 5 working days after the date an ACP was established.

2.10.3.7 an operational plan covering all the products identified under 2.10.3.4.5 for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

2.10.3.7.1 an identification of the compliance periods and dates for the responsible ACP party to summarize the information required by the Department in an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than 365 days. The responsible ACP party also shall choose the dates for summarizing information such that all required VOC content and enforceable sales data for all ACP products shall be summarized at the same time and at the same frequency;

2.10.3.7.2 an identification of specific enforceable sales records summarized in the operational plan for the compliance period dates specified in 2.10.3.7.1;

2.10.3.7.3 for a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party(ies) that they will transfer the surplus reductions to the small business or one-product business upon adoption of the ACP;

2.10.3.7.4 for each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.

2.10.3.7.5 the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect;

2.10.3.7.6 a detailed write-up showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This write-up shall use the equations specified in "ACP emissions" and "ACP limit" for projecting the ACP emissions and ACP limits during each compliance period. It shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in the State of Delaware during each compliance period;

2.10.3.7.7 a certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names mischaracterizing ACP product

reformulations that have occurred in the past, or any other attempts to circumvent the provisions of Section 2.0;

2.10.3.7.8 written explanations of the date-codes that will be displayed on each ACP product's container or packaging;

2.10.3.7.9 a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP;

2.10.3.7.10 a reconciliation of shortfalls plan which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

2.10.3.7.10.1 a clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75%, and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

2.10.3.7.10.2 a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in 2.10.3.7.10; and

2.10.3.7.10.3 a commitment to provide any record or information requested by the Department to verify that the shortfalls have been completely reconciled.

2.10.3.7.11 a declaration, signed by a legal representative for the responsible ACP party which states that all information and plans included in the ACP are true and correct.

2.10.4 Record Keeping and Availability of Requested Information.

2.10.4.1 All information specified in an ACP shall be maintained by the responsible ACP party for a minimum of three years after the ACP is cancelled or expires. Such records shall be clearly legible and maintained in good condition during this period.

2.10.4.2 The records specified in 2.10.5.1 shall be made available to the Department or an authorized representative:

2.10.4.2.1 immediately upon request, during an on-site visit to a responsible ACP party; or

2.10.4.2.2 within five working days after receipt of a written request from the Department; or

2.10.4.2.3 within a time period mutually agreed upon by the Department and the responsible ACP party.

2.10.5 Reporting

2.10.5.1 Upon establishing an ACP, the responsible ACP party shall notify the Department, in writing, that an ACP has been established and shall submit to the Department all of the information specified in 2.10.3.

2.10.5.2 At any time that the information specified in 2.10.3 is modified for any reason, the Department shall be promptly notified of the change.

2.10.5.3 When a shortfall occurs, the responsible ACP party shall promptly notify the Department. When the shortfall is reconciled, the responsible ACP party will notify the Department.

2.10.5.4 When a VOC exceedance occurs, the responsible ACP party shall promptly notify the Department of the exceedance and plans for correction. Any exceedance is a violation of Section 2.0 and may result in penalties.

2.10.6 Violations.

2.10.6.1 Any person who commits a violation of Section 2.0 may be subject to the penalties specified in applicable Delaware laws and regulations. Failure to meet any requirement of Section 2.0 or any condition of an ACP shall constitute a single, separate violation of Section 2.0 for each day until such requirement or condition is satisfied, except as otherwise provided in 2.10.6.3 through 2.10.6.8.

2.10.6.2 False reporting of any information contained in an ACP, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of Section 2.0 for each day that the ACP is in effect.

2.10.6.3 Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP shall constitute a single, separate violation of the requirements of Section 2.0 for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use in the State of Delaware.

2.10.6.4 Any of the following actions shall each constitute a single, separate violation of the requirements of Section 2.0 for each day after the applicable deadline until the requirement is satisfied:

2.10.6.4.1 Failure to record data (i.e., "missing data") or failure to record data accurately (i.e., "inaccurate data") in writing to the Department regarding the VOC content, LVP content, enforceable sales, or any other information required by any deadline specified by the Department;

2.10.6.4.2 False reporting of any information submitted to the Department for determining compliance with the ACP requirements;

2.10.6.4.3 Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP, within 30 working days from the date of written notification of a shortfall;

2.10.6.4.4 Failure to completely reconcile the shortfall as specified in the ACP, within 90 working days from the date of written notification of a shortfall.

2.10.6.5 False reporting or failure to report any of the information specified in 2.10.7.2.9, or the sale or transfer of invalid surplus reductions, shall constitute a single, separate violation of the requirements of Section 2.0 for each day during the time period for which the surplus reductions are claimed to be valid.

2.10.6.6 Except as provided in 2.10.7, any exceedance of the ACP limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of Section 2.0 for each day of the applicable compliance period. The responsible ACP party shall determine whether an exceedance of the ACP limit has occurred as follows and promptly report the results to the Department:

2.10.6.6.1 If the responsible ACP party has recorded all required information for the applicable compliance period specified in an ACP, then the manufacturer shall determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

2.10.6.6.2 If the responsible ACP party has failed to provide all the required information specified in the ACP for an applicable compliance period, determining whether an exceedance of the ACP limit has occurred shall be done as follows:

2.10.6.6.2.1 for the missing data days, calculate the total maximum historical emissions, as specified in "Total maximum historical emissions (TMHE)" in Section 2.2 of this regulation;

2.10.6.6.2.2 for the remaining portion of the compliance period which are not missing data days, calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

2.10.6.6.2.3 the ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to 2.10.6.6.2.1, and the emissions determined pursuant to 2.10.6.6.2.2;

2.10.6.6.3 calculate the ACP limit for the entire compliance period using ACP standards applicable to each ACP product and enforceable sales records specified in 2.10.6.6.2.2. Enforceable sales for each ACP product during missing data days, as specified in 2.10.6.6.2.1, shall be zero (0).

2.10.6.6.4 an exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to 2.10.6.6.2.3, exceeds the ACP limit, determined pursuant to 2.10.6.6.3.

2.10.6.7 If a violation specified in 2.10.6.6 occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$NEV = (ACP \text{ Emissions} - ACP \text{ Limit}) \times 1 \text{ Violation} / 40 \text{ Pounds}$$

where,

NEV = number of ACP limit violations

ACP emissions = the ACP emissions for the compliance period

ACP limit = the ACP limit for the compliance period

The responsible ACP party may determine the number of ACP limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP limit violations pursuant to 2.10.6.7.

2.10.6.8 In assessing the amount of penalties for any violation occurring pursuant to 2.10.6.1 through 2.10.6.7, circumstances covered in applicable laws and regulations of the State of Delaware shall be taken into consideration.

2.10.6.9 A cause of action against a responsible ACP party under 2.10.6 shall be

deemed to accrue on the date(s) when the records establishing a violation are received by the Department.

2.10.6.10 The responsible ACP party is fully liable for compliance with the requirements of Section 2.0, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of Section 2.0.

2.10.7 Surplus Reductions and Surplus Trading.

2.10.7.1 Any surplus reductions of VOC achieved by a responsible ACP party operating under an ACP may be represented in the form of certificates which can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in 2.10.7.2. All surplus reductions shall be calculated at the end of each compliance period within the time specified in the established ACP. Surplus reduction certificates shall not constitute instruments, securities, or any other form of property.

2.10.7.2 The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

2.10.7.2.1 For the purposes of Section 2.0, VOC reductions from sources of VOC other than consumer products subject to the VOC standards specified in 2.3.1 may not be used to generate "Surplus reductions";

2.10.7.2.2 Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under a prior established ACP;

2.10.7.2.3 Surplus reductions may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to 2.10.11;

2.10.7.2.4 Surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;

2.10.7.2.5 Except as provided in 2.10.7.2.6.2, only small or one-product businesses selling products under an established ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

2.10.7.2.6 While valid, surplus reductions can be used only for the following purposes:

2.10.7.2.6.1 to adjust either the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not used by any responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

2.10.7.2.6.2 to be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfall plan pursuant to 2.10.3.7.10.

2.10.7.2.7 A valid surplus reduction shall be in effect starting five (5) days after the date of identification by the responsible ACP party, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

2.10.7.2.8 At least five (5) working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include all of the following:

2.10.7.2.8.1 the date the transfer is to become effective;

2.10.7.2.8.2 the date the surplus reductions being traded are due to expire;

2.10.7.2.8.3 the amount (in pounds of VOCs) of surplus reductions that are being transferred;

2.10.7.2.8.4 the total purchase price paid by the buyer for the surplus reductions;

2.10.7.2.8.5 the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions;

2.10.7.2.8.6 a copy of the surplus reductions certificate issued by the responsible ACP party, signed by the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining non traded surplus reductions, if applicable,

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and shall show their expiration date. The copy shall indicate limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in 2.10.7.

2.10.7.2.9 Surplus reduction credits shall only be traded between ACP product(s) for consumer products.

2.10.8 Reconciliation of Shortfalls.

2.10.8.1 At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period. Upon receipt of this information, the Department shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

2.10.8.2 The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP, within 30 working days from the date of written notification of a shortfall by the Department.

2.10.8.3 All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP.

2.10.8.4 All requirements specified in the ACP, including all applicable ACP limits, shall remain in effect while any shortfalls are in the process of being reconciled.

2.10.9 Notification of Modifications to an ACP by the Responsible ACP Party.

2.10.9.1 The responsible ACP party shall notify the Department, in writing, of any change in an ACP product's:

- 2.10.9.1.1 product name,
- 2.10.9.1.2 product formulation,
- 2.10.9.1.3 product form,
- 2.10.9.1.4 product function,
- 2.10.9.1.5 applicable product category(ies),
- 2.10.9.1.6 VOC content,
- 2.10.9.1.7 LVP content,
- 2.10.9.1.8 date-codes, or
- 2.10.9.1.9 recommended product usage directions, no later than 15 working

days from the date such a change occurs.

For each modification, the notification shall fully explain the following:

2.10.9.1.10 the nature of the modification;

2.10.9.1.11 the extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;

2.10.9.1.12 the extent to which the ACP emissions and ACP limit specified in the ACP will be changed for the applicable compliance period; and

2.10.9.1.13 the effective date and corresponding date-codes for the modification.

2.10.9.2 Except as otherwise provided in 2.10.7.2, the responsible ACP party shall notify the Department, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of 2.10.3. The responsible ACP party shall provide such notification to the Department no later than 15 working days from the date such information is known to the responsible ACP party.

2.10.10 Modification of an ACP by the Department

2.10.10.1 If the Department determines that:

2.10.10.1.1 the enforceable sales for an ACP product are no longer at least 75.0% of the gross Delaware sales for that product, or

2.10.10.1.2 the information submitted pursuant to a request is no longer valid, or

2.10.10.1.3 the ACP emissions are exceeding the ACP limit specified in the ACP, then the Department shall modify the ACP as necessary to ensure that the ACP meets all requirements of Section 2.0 and that the ACP emissions will not exceed the ACP limit.

The Department shall not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be modified.

2.10.10.2 If any applicable VOC standards specified in 2.3.1 are modified in a future rule making, the responsible ACP party shall modify the ACP limit specified in the ACP to reflect the modified ACP VOC standards as of their effective dates.

2.10.11 Cancellation of an ACP

2.10.11.1 An ACP shall remain in effect until:

- 2.10.11.1.1 the ACP reaches the specified expiration date;
- 2.10.11.1.2 the ACP is modified by the responsible ACP party;
- 2.10.11.1.3 the ACP is modified by the Department, as provided in 2.10.10;
- 2.10.11.1.4 the ACP includes a product for which the VOC standard specified in

2.3.1 is modified by the Department in a future rule making, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date(s) of the modified standard;

2.10.11.1.5 the ACP is cancelled pursuant to 2.10.11.2.

2.10.11.2 The Department shall cancel an ACP if any of the following circumstances

occur:

2.10.11.2.1 the responsible ACP party demonstrates to the satisfaction of the Department that the continuation of the ACP will result in an extraordinary economic hardship;

2.10.11.2.2 the responsible ACP party violates the requirements of the ACP, and the violation(s) results in a shortfall that is 20.0% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20.0% or more );

2.10.11.2.3 the responsible ACP party fails to meet the requirements of 2.10.8 (Reconciliation of Shortfalls) within the time periods specified in 2.10.8; or

2.10.11.2.4 the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

2.10.11.3 The Department shall not cancel an ACP pursuant to 2.10.11.2 without first affording the responsible ACP party an opportunity for a public hearing to determine if the ACP should be canceled.

2.10.11.4 The responsible ACP party for an ACP which is canceled pursuant to 2.10.11.2 and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

2.10.11.4.1 all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of 2.10.8, and

2.10.11.4.2 all ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 2.3.1 immediately upon the effective date of ACP cancellation.

2.10.11.5 Any violations incurred pursuant to 2.10.6 shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to 2.10.9, 2.10.10, or 2.10.11].

2.10.12 Treatment of Information.

The information required by 2.10.3.1, 2.10.3.2, and 2.10.7.2.8 is public information which may not be claimed as confidential. All information submitted to the Department is subject to public review under terms of the Freedom of Information Act (FOIA) (to be found at 29 **Del.C.** Ch. 100), unless deemed to be confidential by the Secretary in accordance with the procedures outlined in the FOIA regulation and codified at 29 **Del.C.** 10002(d). The procedure an applicant must follow in order to have information classified as confidential is reviewed in the FOIA regulation which can be obtained from the Department.

2.10.13 Other Applicable Requirements.

A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

2.10.13.1 The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP. The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2.10.13.2 The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP and Section 2.0.

2.11 Related Delaware Rules.

The following Delaware rules are referred to in Section 2.0 and are required to fully understand the provisions of Section 2.0. Copies of these related rules may be obtained through the State of Delaware web site <http://www.delaware.gov>, by writing to State of Delaware, Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, Delaware 19720 or by calling 302-323-4542.

2.11.1 Some definitions are in "Regulations Governing the Control of Air Pollution", Air Quality

Management Section, Division of Air and Waste Management, "Regulation No. 1101, Definitions and Administrative Principles". This regulation also is available on the Department of Natural Resources and Environmental Control (DNREC) web site <http://www.dnrec.state.de.us/DNREC2000>.

2.11.2 The state pesticide law, "State of **Delaware Code** Title 3, Part II, Chapter 12" also can be obtained by writing the State of Delaware, Department of Agriculture, 2320 South Dupont Highway, Dover, Delaware 19901 or by calling 302-739-4811. The pesticide law also can be found on the following web site, <http://www.michie.com>.

2.11.3 The Freedom of Information Act (FOIA), Title 29 **Del.C.** Ch. 100, Section 10002(d) also is available on the following web site <http://www.michie.com>. The DNREC FOIA regulation also is available at <http://www.dnrec.state.de.us/DNREC2000>.

2.11.4 The Delaware code relating to public hearings for environmental matters, Title 7 **Del.C.** Ch. 60, Section 6006 also can be found on the following web site, <http://www.michie.com>.

2.11.5 The **Delaware Code** relating to penalties for violations of environmental regulations, Title 7 **Del.C.** Ch. 60 Sections 6005 and 6013 also can be found at the following web site <http://www.michie.com>.]

**TABLE 2-1**  
**VOC CONTENT LIMITS FOR CONSUMER PRODUCTS**  
**(percent volatile organic compounds by weight)**

PRODUCT CATEGORY	VOC CONTENT LIMIT
Adhesives	
Aerosol	
Mist Spray	65
Web Spray	55
Special Purpose	
(mounting, auto engine compartment and flexible vinyl)	70
(polystyrene foam and automotive headliner)	65
(polyolefin and laminate repair/edgebonding)	60
Contact	80 *
Construction, Panel, and Floor Covering	15
General Purpose	10 *
Structural Waterproof	15 *
Aerosol Cooking Spray	18 *
Air Fresheners	
Double-Phase Aerosols	25
Liquids	18 *
Pump Sprays	18 *
Single-Phase Aerosols	30
Solids	3 *
Gels	3*
Antiperspirants	
Aerosol	
(% HVOC)	40
(% MVOC)	10
Non-aerosol	
(% HVOC)	0
(% MVOC)	0
Automotive Brake Cleaners	45
Automotive Rubbing or Polishing Compound	17
Automotive Wax, Polish, Sealant or Glaze	
Hard Paste Waxes	45
Instant Detailers	3
All Other Forms	15
Automotive Windshield Washers	35 *

Bathroom and Tile Cleaners	
Aerosols	7 *
All Other Forms	5 *
Bug and Tar Remover	40
Carburetor or Fuel-injection Air Intake Cleaners	45
Carpet and Upholstery Cleaners	
Aerosols	7
Non-aerosols (dilutables)	0.1
Non-aerosols (ready to use)	3
Charcoal Lighter Material	see 2.3.4 *
Deodorants	
Aerosol	
(% HVOC)	0
(% MVOC)	10
Non-aerosol	
(% HVOC)	0
(% MVOC)	0
Dusting Aids	
Aerosols	25
All Other Forms	7 *
Engine Degreasers	
Aerosol	35
Non-aerosol	5
Fabric Protectants	60
Floor Polishes and Waxes	
Products for Flexible Flooring Materials	7 *
Products for Non-resilient Flooring	10 *
Wood Flooring	90 *
Floor Wax Strippers (non-aerosols)	see 2.3.6
Furniture Maintenance Products	
Aerosols	17
All Other Forms (except solid or paste)	7
General Purpose Cleaners	
Aerosols	10
Non-aerosols	4
General Purpose Degreasers	
Aerosols	50
Non-aerosols	4
Glass Cleaners	
Aerosols	12 *
Non-aerosols	4
Hair Mousses	6
Hairshines	55
Hairsprays	55
Hair Styling Gels	6 *
Heavy Duty Hand Cleaner Soap	8
Insecticides	
Crawling Bug (aerosol)	15
Crawling Bug (all other forms)	20
Flea and Tick	25 *
Flying Bug (aerosol)	25
Flying Bug (all other forms)	35
Foggers	45 *
Lawn and Garden (non-aerosol)	3
Lawn and Garden (all other forms)	20
Wasp and Hornet	40

Laundry Prewash	
Aerosols/Solids	22 *
All other forms	5 *
Laundry Starch Products	5 *
Metal Polishes/Cleaners	30
Multi-purpose Lubricant (excluding solid or semi-solid products)	50
Nail Polish Remover	75
Non-selective Terrestrial Herbicide (non-aerosol)	3
Oven Cleaners	
Aerosols and Pump sprays	8 *
Liquids	5 *
Paint Removers and Strippers	50
Penetrants	50
Rubber and Vinyl Protectants	
Aerosols	10
Non-aerosols	3
Sealants and Caulking Compounds	4
Shaving Creams	5 *
Silicone-based Multi-Purpose Lubricants (excluding solid or semi-solid products)	60
Spot Removers	
Aerosols	25
Non-aerosols	8
Tire Sealants and Inflators	20
Undercoatings (aerosols)	40

\* Limits and definition unchanged from EPA rule at 40 CFR 59 Subpart C, "National Volatile Organic Compound Emission Standards for Consumer Products", which remains in force.

**3.0 Portable Fuel Containers**

3.1 Applicability.

3.1.1 Section 3.0 applies to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of Delaware; except:

3.1.1.1 Safety cans meeting the requirements of 29 CFR 1926, Subpart F.

3.1.1.2 Portable fuel containers with a nominal capacity less than or equal to one quart.

3.1.1.3 Rapid refueling devices with nominal capacities greater than or equal to four gallons provided such devices are designed for use in officially sanctioned off-highway motorcycle competitions, and either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

3.1.1.4 Portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating that outboard engine.

3.1.2 Compliance with the requirements of Section 3.0 does not exempt any spill-proof system or spill-proof spout from compliance with other applicable Federal or State requirements.

3.1.3 The requirements of Section 3.0 apply on and after January 1, 2003, except that, any portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003 that does not meet the requirements of Section 3.0, may be sold, supplied, or offered for sale until January 1, 2004, provided that the date of manufacture or a date code, representing the date of manufacture, is clearly displayed on the portable fuel container or spout.

3.1.4 Any person subject to any requirement of Section 3.0 may comply with an alternative control plan that has been approved by the Department and the U.S. EPA as part of Delaware's State Implementation Plan.

3.2 Definitions.

For the purpose of Section 3.0, the following definitions apply:

**"Fuel"** means a hydrocarbon mixture used to power any spark ignition internal combustion engine.

**"Manufacturer"** means any person who imports, manufactures, produces, assembles, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.

**"Nominal capacity"** means the volume, indicated by the manufacturer that represents the maximum recommended filling level.

**"Outboard engine"** means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the operating position, houses the engine and drive unit external to the hull of the marine watercraft.

**"Permeation"** means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

**"Person"** means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, estate or any legal entity whatsoever.

**"Portable fuel container"** means any container or vessel with a nominal capacity of ten gallons or less that is intended for reuse and that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

**"Spill-proof spout"** means any spout that complies with all of the performance standards specified in Section 3.3.2.

**"Spill-proof system"** means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in Section 3.3.1.

**"Spout"** means any device that can be firmly attached to a portable fuel container, through which the contents of a portable fuel container can be dispensed.

**"Target fuel tank"** means any receptacle that receives fuel from a portable fuel container.

### 3.3 Standards.

3.3.1 No person subject to the requirements of Section 3.0 shall sell, supply, offer for sale, or manufactures for sale portable fuel container(s) or spout(s) or both portable fuel container(s) and spout(s) for use in the State of Delaware which does not:

3.3.1.1 Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

3.3.1.2 Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

3.3.1.3 Have only one opening for both filling and pouring.

3.3.1.4 Provide a fuel flow rate and fill level of:

3.3.1.4.1 not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

3.3.1.4.1.1 less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening; or

3.3.1.4.1.2 greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any; or

3.3.1.4.2 not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

3.3.1.4.3 not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

3.3.1.5 Meet a permeation rate of 0.4 grams per gallon per day or less.

3.3.1.6 Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

3.3.2 No person subject to the requirements of Section 3.0 shall sell, supply, offer for sale, or manufacture for sale any spout for use in the State of Delaware, which does not:

3.3.2.1 Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

3.3.2.2 Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.

3.3.2.3 Provide a fuel flow rate and fill level of:

3.3.2.3.1 not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

3.3.2.3.1.1 less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening; or,

3.3.2.3.1.2 greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or,

3.3.2.3.2 not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

3.3.2.3.3 not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

3.3.2.4 Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

#### 3.4 Testing Procedures.

3.4.1 Any manufacturer subject to the requirements of Section 3.3 shall perform the following compliance tests in accordance with test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Records of compliance testing shall be maintained for as long as the product is available for sale in Delaware, and test results shall be made available to the Department within 60 days of request.

3.4.1.1 The following tests shall be carried out to determine compliance with Section 3.3.2 prior to the product being manufactured for sale in Delaware:

3.4.1.1.1 "Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by California Air Resources Board (CARB) on July 6, 2000. This test method is hereby adopted by reference.

3.4.1.1.2 "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

3.4.1.1.3 "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

3.4.1.2 The following tests shall be carried out to determine compliance with Section 3.3.1 prior to the product being manufactured for sale:

3.4.1.2.1 All of the test procedures stated in Section 3.4.1.1.

3.4.1.2.2 "Test Method 513, Determination of Permeation Rate for Spill-Proof Systems," adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.

#### 3.5 Administrative Requirements.

3.5.1 Any manufacturer subject to the requirements of Section 3.3.1 shall clearly display on each spill-proof system:

3.5.1.1 the phrase "Spill-Proof System";

3.5.1.2 a date of manufacture or representative date code; and

3.5.1.3 a representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with the requirements of Section 3.3.1.

3.5.2 Any person subject to the requirements of Section 3.3.2 shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

3.5.2.1 the phrase "Spill-Proof Spout";

3.5.2.2 a date of manufacture or representative date code; and

3.5.2.3 a representative code identifying the spout as subject to and complying with the requirements of Section 3.3.2.

3.5.3 Any manufacturer subject to Section 3.5.1 and/or Section 3.5.2 shall file an explanation of both the date code and representative code with the Department prior to manufacturing the product for sale in the State of Delaware.

3.5.4 Any person subject to Section 3.5.1 and/or Section 3.5.2 shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

3.5.5 Any person subject to Section 3.5.2 shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate.

3.5.6 Any person not subject to or not in compliance with Section 3.3 may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout, respectively, on any sticker or label affixed thereto, or on any accompanying package.

3.5.7 Any person subject to and complying with Section 3.3, that due to its design or other features, cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

3.5.7.1 For a portable fuel container or portable fuel container and spouts sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

3.5.7.2 For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

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**DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)

**PUBLIC NOTICE****SAN # 2006-09****1. Title of of the Regulations:**

(1) New Regulation No. 1146 - "Electric Generating Unit (EGU) Multi-Pollutant Regulation," of the State of Delaware "Regulations Governing the Control of Air Pollution," and (2) Section 111(d) State Plan for the Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units.

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

The proposed Regulation No. 1146 establishes Nitrogen Oxides (NOx), Sulfur Dioxide (SO<sub>2</sub>), and mercury emissions limits to achieve reductions of those pollutants from Delaware's large electric generation units. The reduction in NOx, SO<sub>2</sub>, and mercury emissions will: 1) reduce the impact of those emissions on public health; 2) aid in Delaware's attainment of the State and National Ambient Air Quality Standard (NAAQS) for ground level ozone and fine particulate matter; 3) help address local scale fine particulate and mercury problems attributable to coal and residual oil-fired electric generating units, 4) satisfy Delaware's obligations under the Clean Air Mercury Rule (CAMR), and 5) improve visibility and help satisfy Delaware's EGU-related regional haze obligations. Once finalized Regulation No. 1146 will be submitted to the EPA for approval into Delaware's ozone and fine particulate matter State Implementation Plans (SIPs).

The proposed Section 111(d) State Plan for the Control of Mercury Emissions from Coal-fired Electric Steam Generating Units satisfies the U.S. Environmental Protection Agency (EPA) Clean Air Mercury Rule (CAMR) requirements for Delaware. The main component of this plan is the mercury portion of Delaware's Air Regulation No. 46, Electric Generating Unit (EGU) Multi-Pollutant Regulation. Regulation No. 46 does not provide for participation in the EPA-managed cap-and-trade program, but instead establishes a program that is designed to achieve emission reductions and cap overall mercury emissions from EGUs within our borders in a shorter timeframe. Once finalized the 111(d) plan will be submitted to the EPA for approval.

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

None

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

7 Delaware Code, Chapter 60

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

None

**6. Notice of Public Comment:**

The public comment period for this proposed amendment will extend through at least October 2, 2006. Interested parties may submit comments in writing during this time frame to: Bob Clausen, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on the following dates, times and locations:

September 25, 2006 6:00 p.m.	DNREC Auditorium 89 Kings Highway Dover, DE 19901
September 27, 2006 6:00 p.m.	DNREC Lukens Drive Office 391 Lukens Drive New Castle, DE 19720
September 28, 2006 6:00 p.m.	Del Tech - Owens Campus Rt. 18 and Seashore Hwy Georgetown, DE 19947

**7. Prepared By:**

Ron Amirikian (302) 739-9402 August 10, 2006

**1146 Electric Generating Unit (EGU) Multi-Pollutant Regulations****1.0 Preamble:**

This regulation establishes Nitrogen Oxides (NOx), Sulfur Dioxide (SO<sub>2</sub>), and mercury emissions limits to achieve reductions of those pollutants from Delaware's large electric generation units. The reduction in NOx, SO<sub>2</sub>, and mercury emissions will: 1) reduce the impact of those emissions on public health; 2) aid in Delaware's attainment of the State and National Ambient Air Quality Standard (NAAQS) for ground level ozone and fine particulate matter; 3) help address local scale fine particulate and mercury problems attributable to coal and residual oil-fired electric generating units, 4) satisfy Delaware's obligations under the Clean Air Mercury Rule (CAMR), and 5) improve visibility and help satisfy Delaware's EGU-related regional haze obligations.

While the purpose of this regulation is to reduce air emissions, any emission control equipment installed to meet the requirements of this regulation may impact other media (e.g., water), and any overall environmental impacts must be considered by subject entities when they design their overall compliance strategy. Any emission controls installed to meet the requirements of this regulation will be subject to public review and comment through air Regulation 1102 and 1130 permitting requirements.

Separate from this Regulation the Department will propose regulations to address CO<sub>2</sub> emissions from these units, and regulations to satisfy direct fine particulate matter Reasonably Available Control Technology (RACT) and Best Available Retrofit Technology (BART) requirements. Together, these regulations will cover current and foreseeable requirements relative to the subject units.

**2.0 Applicability:**

This regulation applies to coal-fired and residual oil-fired electric generating units located in Delaware with a nameplate capacity rating of 25 MW or greater that commenced operation on or before the effective date of this regulation.

**3.0 Definitions:** The following words and terms, when used in this regulation, shall have the following meanings:

"Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

"Coal" means any solid fuel classified as anthracite, bituminous, sub-bituminous, or lignite.

"Coal-fired" means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of other fuel, during any year.

"Department" means the State of Delaware Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended.

**"Designated representative"** means the natural person who is authorized by the owners and operators of the source and all units at the source to legally bind each owner and operator in matters pertaining to this regulation. If the source subject to this regulation is also subject to the Federal Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

**"Emissions"** means air pollutants exhausted from a unit or source into the atmosphere.

**"Generator"** means a device that produces electricity.

**"Heat input"** means the product (in MMBTU/time or TBTU/time) of the gross calorific value of the fuel (in MMBTU/lb or TBTU/lb) and the fuel feed rate (in lb of fuel/time) into a combustion device; or as calculated by any other method approved by the Department and the Administrator, and does not include the heat derived from pre-heated combustion air, recirculated flue gasses, or exhaust from other sources.

**"Inlet mercury"** means the average concentration of mercury in the flue gas at the inlet to any pollution control device(s).

**"Nameplate capacity"** means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings) as specified by the manufacturer of the generator or, starting from the completion of any physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other de-ratings), such increased maximum amount as specified by the person conducting the physical change.

**"Operator"** means any person who operates, controls, or supervises a unit or source subject to this regulation and shall include, but not be limited to, any holding company, utility system, or plant manager of such unit or source.

**"Ounce"** means 28.4 grams.

**"Owner"** means: A) any holder of any portion of the legal or equitable title in a unit; B) any purchaser of power from a unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from the unit.

**"Residual oil"** means No. 5 or No. 6 fuel oil.

**"Ton"** means 2000 pounds.

**"Unit"** means, for the purposes of this regulation, a stationary, fossil-fuel-fired boiler supplying all or part of its output to an electric generating device.

#### **4.0 NOX Emissions Limitations**

4.1 From January 1, 2009 through December 31, 2011, no unit subject to this regulation shall emit NOx at a rate exceeding 0.15 lb/MMBTU.

4.1.1 Compliance with the requirements of paragraph 4.1 of this section shall be demonstrated on a rolling 24-hour average basis.

4.1.2 NOx emissions from multiple units subject to this regulation at a common facility may be averaged on a heat input basis to demonstrate compliance with the requirements of paragraph 4.1 of this regulation.

4.2 On and after January 1, 2009, no unit subject to this regulation shall emit annual NOx mass emissions that exceed the values shown in Table I.

4.2.1 From January 1, 2009 through December 31, 2011, compliance with the requirements of paragraph 4.2 of this regulation may be achieved by demonstrating that the total number of tons of NOx emitted from a common facility does not exceed the sum of the tonnage limitations for all of the units subject to this regulation at that facility.

4.2.2 Compliance with the requirements of paragraph 4.2 of this regulation shall not be achieved by using, tendering, or otherwise acquiring NOx allowances under any state or federal emission trading program.

4.2.3 For the purpose of determining compliance with the requirements of paragraph 4.2. of this regulation, the total tons for a specified period shall be calculated as the sum of all recorded hourly emissions, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any remaining fraction of a ton less than 0.50 ton deemed equal to zero tons.

4.3 On and after January 1, 2012, no unit subject to this regulation shall emit NOx at a rate exceeding 0.125 lb/MMBTU, demonstrated on a rolling 24-hour average basis.

4.4 Compliance with the requirements of paragraphs 4.1 through 4.3 of this section shall be demonstrated with a continuous emissions monitoring system that is installed, calibrated, operated, and certified in accordance with

40 CFR Part 75 (May 18, 2005 amendment) or other method approved by the Department and the Administrator, and meeting the requirements of 40 CFR Part 96, subpart HH (April 28, 2006 amendment).

## **5.0 SO<sub>2</sub> Emissions Limitations**

5.1 From January 1, 2009 through December 31, 2011, no coal fired unit subject to this regulation shall emit SO<sub>2</sub> at a rate exceeding 0.37 lb/MMBTU heat input.

5.1.1 Compliance with the requirements of paragraph 5.1 of this section shall be demonstrated on a 24-hour rolling average basis.

5.1.2 SO<sub>2</sub> emissions from multiple units subject to this regulation at a common facility may be averaged on a heat input basis to demonstrate compliance with the requirements of paragraph 5.1 of this regulation.

5.2 On and after January 1, 2012, no coal-fired unit subject to this regulation shall emit SO<sub>2</sub> at a rate exceeding 0.26 lb/MMBTU heat input, demonstrated on a rolling 24-hour average basis.

5.3 On and after January 1, 2009, no unit subject to this regulation shall emit annual SO<sub>2</sub> mass emissions that exceed the values shown in Table II.

5.3.1 From January 1, 2009 through December 31, 2011, compliance with the requirements of paragraph 5.3 of this regulation may be achieved by demonstrating that the total number of tons of SO<sub>2</sub> emitted from a common facility does not exceed the sum of the tonnage limitations for all of the units subject to this regulation at that facility.

5.3.2 Compliance with the requirements of paragraph 5.3 of this regulation shall not be achieved by using, tendering, or otherwise acquiring SO<sub>2</sub> allowances under any state or federal emission trading program.

5.3.3 For the purpose of determining compliance with the requirements of paragraph 5.3 of this regulation, the total tons for a specified period shall be calculated as the sum of all recorded hourly emissions, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any remaining fraction of a ton less than 0.50 ton deemed equal to zero tons.

5.4 Compliance with the requirements of paragraphs 5.1 through 5.3 of this regulation shall be demonstrated with a continuous emissions monitoring system that is installed, calibrated, operated and certified in accordance with 40 CFR Part 75 (May 18, 2005 amendment) or other method approved by the Department and the Administrator, and meeting the monitoring and reporting requirements of 40 CFR Part 96, subpart HHH (April 28, 2006 amendment).

5.5 On and after January 1, 2009, no residual oil with a sulfur content in excess of 0.5%, by weight, shall be received for any residual oil-fired unit subject to this regulation.

5.5.1 Compliance with the requirements of paragraph 5.5 shall be demonstrated by fuel oil sampling and analysis. Samples shall be collected:

5.5.1.1 From the transport vessel for each shipment of residual fuel oil received at the facility for combustion in the subject residual oil-fired unit, or

5.5.1.2 From the supply pipeline each day residual oil is delivered to the facility via pipeline for combustion in a residual oil-fired unit subject to this regulation, after sufficient fuel oil has been drained from the sampling line to remove any fuel oil that may have been standing in the sampling line, or .

5.5.1.3 From the supply pipeline at the inlet to the residual oil-fired unit subject to this regulation each day the unit fires any quantity of oil fuel, after sufficient fuel oil has been drained from the sampling line to remove any fuel oil that may have been standing in the sampling line.

5.5.2 Fuel oil samples shall be analyzed in accordance with ASTM D 129-00, ASTM D 1552-03, ASTM D 2622-05, or ASTM D 4294-03.

## **6.0 Mercury Emissions Limitations**

6.1 From January 1, 2009 through December 31, 2012, any coal-fired unit subject to this regulation shall, on a quarterly average basis:

6.1.1 Emit mercury at a rate that does not exceed 1.0 lb/TBTU heat input, or

6.1.2 Capture and control a minimum 80% of baseline inlet mercury emissions.

6.2 On or after January 1, 2013, any coal-fired unit subject to this regulation shall, on a quarterly average basis:

6.2.1 Emit mercury at a rate that does not exceed 0.6 lb/TBTU heat input, or

6.2.2 Capture and control a minimum 90% of baseline inlet mercury emissions.

6.3 Annual mercury mass emissions from the coal-fired units subject to this regulation shall not exceed the

values shown in Table III.

6.3.1 Compliance with the requirements of paragraph 6.3 of this regulation shall be demonstrated on an annual basis.

6.3.2 Compliance with the requirements of paragraph 6.3 of this regulation shall not be achieved by using, tendering, or otherwise acquiring mercury allowances under any state or federal emissions trading program.

6.4 Compliance with the requirements of paragraphs 6.1 through 6.3 of this regulation shall be demonstrated as follows:

6.4.1 Compliance with the requirements of paragraphs 6.1.1., 6.2.1, and 6.3. shall be demonstrated with a continuous emissions monitoring system that is installed, calibrated, operated, and certified in accordance with 40 CFR Part 75 (May 18, 2005 amendment) and meeting the monitoring and reporting requirements of 40 CFR Part 60 (June 9, 2006 amendment).

6.4.2 Compliance with the requirements of paragraphs 6.1.2. and 6.2.2. shall be demonstrated as follows:

6.4.2.1 During the period January 1, 2007 through March 31, 2008, the owner or operator shall conduct at least four quarterly stack tests to measure the mercury in the flue gas stream.

6.4.2.1.1 Except as provided for in 6.4.2.1.2. the test sampling location shall be located upstream of any pollution control device.

6.4.2.1.2 The sampling location may be located downstream of any SNCR injection points.

6.4.2.2 There shall be at least three valid stack tests per quarter and at least 45 days between stack tests performed for a given quarter and the stack tests performed for the preceding quarter, unless otherwise approved by the Department.

6.4.2.3 Each stack test shall be conducted in accordance with a testing protocol approved by the Department. Proposed test protocols shall be submitted to the Department no less than 90 days prior to conducting the mercury tests.

6.4.2.4 The baseline inlet mercury emission rate for the affected unit, in lb/TBTU, shall be determined as the arithmetic average of the quarterly stack tests conducted on that unit in accordance with section 6.4.2.1 of this regulation.

6.4.2.5 No later than June 1, 2008, the owner or operator shall submit a petition to the Department requesting the establishment of a unit specific mercury emission rate limit. As a minimum, the report shall contain the following information:

6.4.2.5.1 Identification and brief description of the affected unit.

6.4.2.5.2 A list and brief description of all emissions control equipment installed on the affected unit at the time of the stack tests, including operating status at the time of the stack tests.

6.4.2.5.3 An accounting of all fuels and fuel quality being fired during the emissions tests.

6.4.2.5.4 Results of each quarterly mercury emissions tests.

6.4.2.5.5 Proposed mercury emission limits that are no greater than 20% of the baseline uncontrolled mercury emission rate determined in accordance with section 6.4.2. of this regulation for the annual periods January 1, 2009 through December 31, 2012, and no greater than 10% of the baseline uncontrolled mercury emission rate determined in accordance with section 6.4.2 of this regulation for the annual periods starting January 1, 2013 and beyond.

6.4.2.5.6 Summary description of the actions anticipated by the owner or operator of the affected unit to attain compliance with the proposed mercury emission limits.

6.4.2.6 The owner or operator of the affected unit shall submit to the Department any additional information requested by the Department necessary for review and approval of the petition.

6.4.2.7 The Department shall establish, for the affected unit, a unit specific mercury emission rate no greater than 20% of the unit's baseline uncontrolled mercury emissions rate for the period January 1, 2009 through December 31, 2012, and no greater than 10% of the unit's baseline uncontrolled mercury emission rate for the period January 2013 and beyond.

## **7.0 Recordkeeping and Reporting**

7.1 The owner or operator of a unit subject to this regulation shall comply with all applicable recordkeeping and reporting requirements of 40 CFR Part 75 (May 18, 2005) and this regulation.

7.2 The owner or operator of a unit subject to this regulation shall maintain, for a period of at least five years, copies of all measurements, tests, reports, and other information required by 40 CFR Part 75 (May 18, 2005 amendment) and this regulation. This information shall be provided to the Department upon request at any time.

7.3 After January 1, 2009, the owner or operator of a unit subject to this regulation shall submit to the Department semi-annual reports in conjunction with the Regulation No. 30 reporting requirements. The semi-annual reports shall contain, as a minimum, the following information:

7.3.1 Tabulation of emission monitoring results reduced to 1-hour averages, on a clock basis, for the period in units consistent with the applicable emission standard.

7.3.2 In addition to the requirements of Section 8.3.1, the following calculations shall be made and reported in the semi-annual report:

7.3.2.1 For mass emission standards based on daily limits, the daily mass emission on a calendar day basis for each day in the period, in units consistent with the applicable emission standard.

7.3.2.2 For mass emissions based on an annual limit, the calendar year-to-date summation of mass emissions through the period being reported, in units consistent with the applicable emission standard.

7.3.2.3 For emission rate averaging, identification of the units being averaged, hourly heat input of the respective units, hourly emission rate of the respective units, and the hourly combined heat input weighted emission average for the affected units.

7.3.3 Identification of any period(s) of, and cause for, any invalid data averages.

7.3.4 Records of any repairs, adjustment, or maintenance to the monitoring system.

7.3.5 The results of all fuel oil sulfur analysis.

7.3.6 Identification of any exceedance of any emission standard provided by this regulation, cause of the exceedance, and corrective action taken in response to the exceedance.

7.3.7 Results from all tests, audits, and recalibrations performed during the period.

7.3.8 Any other relevant data requested by the Department.

7.3.9 A statement, "I am authorized to make this submission on behalf of the owners and operators of the affected facility or affected units for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

7.3.10 Signature by the designated representative.

## **8.0 Compliance Plan**

8.1 The owner or operator of a unit subject to this regulation shall submit a compliance plan to the Department on or before July 1, 2007.

8.2 The compliance plan shall contain, at a minimum, the following information:

8.2.1 Identification of the subject unit.

8.2.2 A description of any existing NOX, SO<sub>2</sub>, and/or mercury emissions control technologies installed on the unit, including identification of the initial installation date of the control technologies.

8.2.3 Identification of the requirements of this regulation applicable to the unit.

8.2.4 A description of the plan or methodology that will be utilized to demonstrate compliance with this regulation.

8.2.5 Identification of emission control technologies, and/or modifications to existing emission control technologies, that will be utilized to comply with the applicable emissions limitations of this regulation. This shall include:

8.2.5.1 A description of the control technology and its applicability to the subject unit.

8.2.5.2 The design control effectiveness or design emission rate following installation of the emission control technology on the subject unit.

8.2.5.3 Estimated dates for start of construction, start-up of the emissions control technology, and estimated project completion date.

8.2.6 A description of the emissions monitoring methodology to be utilized for demonstrating compliance with the emissions limitations of this regulation, including estimated installation dates, start-up dates, and testing dates.

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8.2.7 Identification of any planned changes to administrative or operating procedures or practices intended to achieve compliance with applicable emissions limitations of this regulation.

8.2.8 Any other relevant information requested by the Department.

8.2.9 A statement, "I am authorized to make this submission on behalf of the owners and operators of the affected facility or affected units for which this submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

8.2.10 Signature by the designated representative.

## **9.0 Penalties.**

The Department may enforce all of the provisions of this regulation under 7 Del.C. Chapter 60.

### **Regulation No. 1146: Electric Generating Unit (EGU) Multi-Pollutant Regulation**

**Table I**  
**Annual NO<sub>x</sub> Mass Emissions Limits**

<u>Control Period NO<sub>x</sub></u>	<u>Mass Emissions Limit Unit (tons)</u>
<u>Edge Moor 3</u>	<u>3773</u>
<u>Edge Moor 4</u>	<u>41339</u>
<u>Edge Moor 5</u>	<u>51348</u>
<u>Indian River 1</u>	<u>1601</u>
<u>Indian River 2</u>	<u>2628</u>
<u>Indian River 3</u>	<u>3977</u>
<u>Indian River 4</u>	<u>42032</u>
<u>McKee Run 3</u>	<u>3244</u>

**Table II**  
**Annual SO<sub>2</sub> Mass Emissions Limits**

<u>Control Period SO<sub>2</sub></u>	<u>Mass Emissions Limit Unit (tons)</u>
<u>Edge Moor 3</u>	<u>31391</u>
<u>Edge Moor 4</u>	<u>42410</u>
<u>Edge Moor 5</u>	<u>52427</u>
<u>Indian River 1</u>	<u>11082</u>
<u>Indian River 2</u>	<u>21130</u>
<u>Indian River 3</u>	<u>31759</u>
<u>Indian River 4</u>	<u>43657</u>
<u>McKee Run 3</u>	<u>3439</u>

**Table III  
Annual Mercury Mass Emissions Limits**

	<u>Mercury Mass Emissions</u> 2009 - 2012		<u>Mercury Mass Emissions</u> 2013 and Beyond
	<u>Unit</u>	<u>(ounces)</u>	<u>(ounces)</u>
<u>Edge Moor Unit</u>	3	266	3266106
<u>Edge Moor Unit</u>	4	462	4462183
<u>Indian River Unit</u>	1	207	120782
<u>Indian River Unit</u>	2	216	2216.86
<u>Indian River Unit</u>	3	337	3337134
<u>Indian River Unit</u>	4	700	4700278

**CAA Section 111(D) State Plan for the Control of Mercury Emissions from Coal-fired Electric Steam Generating Units (EGUs)**

**I. Background/Introduction**

On May 18, 2005, the U.S. Environmental Protection Agency (EPA) finalized the Clean Air Mercury Rule (CAMR) to establish standards of performance for mercury emissions from new and existing coal-fired electric steam generating units (EGUs), as defined in Section 111 of the federal Clean Air Act (CAA). See 70 FR 28606, which is attached hereto as Appendix A.

Under CAMR, each State receives an annual budget for mercury emissions from coal-fired EGUs with a nameplate capacity larger than 25 megawatts. A State can meet its CAMR budget either by joining the EPA managed cap-and-trade program or by demonstrating that the State annual EGU mercury budgets codified in 40 CFR §60.24(h)(3) will not be exceeded in any year. The State of Delaware's mercury budget for the period January 1, 2010 through 2017 is 0.072 tons, and its budget for 2018 and thereafter is 0.028 tons.

By November 17, 2006, states must submit a plan to the EPA that meets the requirements of the CAMR. If a state fails to submit a state plan, then the EPA will prescribe a Federal plan for that state under Section 111(d)(2)(A) of the CAA. See 70 Fed. Reg. 28649 (May 18, 2005) and 40 CFR 60.24 (h)(2). The EPA would propose the model rule (i.e., 40 CFR Part 60 Subpart HHHH) under the CAMR as that Federal plan.

In Delaware two (2) facilities with six (6) existing EGUs are subject to the requirements of 60.24(h). Consequently, the Department must develop this State Plan to implement and enforce the Section 111(d) requirements to control mercury emissions from these EGUs.

The main component of this plan is the mercury portion of Delaware's Air Regulation No. 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation. Regulation No. 1146 does not provide for participation in the EPA-managed cap-and-trade program, but instead establishes a program that is designed to achieve emission reductions and cap overall mercury emissions from EGUs within Delaware. Delaware's proposed Regulation No. 1146 establishes both mercury emission rate limitations and mercury emission mass limitations. The mercury mass emissions limitations, expressed in tons per year, are those that will satisfy CAMR requirements. Both the emission rate and emission mass requirements require compliance on a unit-by-unit basis, and do not allow trading or facility-wide emissions averaging.

Delaware is not adopting the federal mercury budget trading program under 40 CFR Part 60 Subpart HHHH. This means that both existing and new (i.e., construction after January 30, 2004) coal fired EGUs are subject to this plan. A new unit set aside has been established to provide for new unit construction - a 5% set aside for Phase I is 0.0036 ton/yr (7.2 lb/yr) and the 3% set aside for Phase II is 0.0008 ton/yr (1.7 lb/yr). Any need beyond this will be addressed by revision to both Regulation No. 1146 and this plan to ensure annual mass emission from coal fired EGUs greater than 25 MW in size in Delaware will not exceed the annual mercury budget established under 40 CFR §60.24(h)(3).

DNREC intends to finalize and submit to the EPA for approval both Regulation No. 1146 and this plan no later than November 17, 2006.

**II. Public Participation [40 CFR §60.23(f)]**

Prior to submitting this Section 111(d) State Plan to EPA for approval, the DNREC will hold three public

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## PROPOSED REGULATIONS

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hearings for the purpose of accepting testimony on this proposed State Plan for controlling mercury emissions from all Coal-fired Electric Steam Generating Units in the State. Because of the integral relationship, these public hearings will coincide with the public hearings on the adoption of Regulation No. 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation. The public hearings will be held on the following dates, times and locations:

<u>September 25, 2006</u> <u>6:00 p.m.</u>	<u>DNREC Auditorium</u> <u>89 Kings Highway</u> <u>Dover, DE 19901</u>
<u>September 27, 2006</u> <u>6:00 p.m.</u>	<u>DNREC Lukens Drive Office</u> <u>391 Lukens Drive</u> <u>New Castle, DE 19720</u>
<u>September 28, 2006</u> <u>6:00 p.m.</u>	<u>Del Tech - Owens Campus</u> <u>Rt. 18 and Seashore Hwy</u> <u>Georgetown, DE 19947</u>

As required under 40 CFR §60.23, DNREC will publish notice of the date, time and location of the hearings at least 30 days prior to the scheduled date of the hearing. The Notice of Public Hearings and opportunity to provide written comments will be published in both the Delaware Register of Regulations and in newspapers of general circulation in the state. In addition, EPA, and states in the interstate region whose air quality may be affected by emissions from Delaware's EGUs will receive notice of the date, time and location of each hearing. The notice will also specify that copies of the proposed Section 111(d) State Plan are available for review in the Departments Dover and New Castle offices.

Persons interested in providing testimony on the proposed Section 111(d) State Plan are encouraged to contact Bob Clausen at (302) 739-9402 prior to the hearing.

Persons interested in submitting written comments on the proposed State plan should send the comments to Bob Clausen, State of Delaware, DNREC, Division of Air and Waste Management, 156 S. State Street, Dover, DE 19901. Written comments will be accepted until October 1, 2006, or any longer time as specified by the Hearing Officer at the public hearings. Copies of the proposed adopted State Plan for EGUs may be obtained from Bob Clausen at the above address or by telephone at (302) 739-9402 (e-mail robert.clausen@state.de.us). This proposed State Plan is also available on the DNREC Web site at [www.awm.delaware.gov/Info/Regs/AQMMultiPReg.htm](http://www.awm.delaware.gov/Info/Regs/AQMMultiPReg.htm).

In accordance with 40 CFR §60.23(f), DNREC will certify that the public hearings were held in accordance with the criteria specified in 40 CFR §60.23(d), and will provide a list of witnesses and their organizational affiliations, if any, appearing at the hearing and a brief written summary of each presentation or written submission. The public hearing certification is attached hereto as Appendix B (Documentation of public participation process).

### **III. Implementation of the Section 111(d) State Plan**

The Department is proposing State-specific regulations as the primary mechanism to control mercury emissions from existing coal-fired electric steam generating units (i.e., Regulation No. 1146). Proposed Regulation No. 1146 implements mercury requirements for all subject existing coal fired EGUs in Delaware, and is attached hereto as Appendix C.

Annual mercury emissions from new coal-fired EGUs will be limited through federally enforceable permit conditions, and allowable mass mercury emissions from new units shall not exceed the amount of the new source set-aside provided for in this plan. Any need beyond the new-source set aside provided for in this plan shall be addressed through revision to Reg. 1146 and this plan. Any revision to Reg. 1146 and this plan shall be pursuant to the requirements of 7 **Del.C.**, Chapter 60 and federal requirements of 40 CFR Part 60. In addition, new coal fired EGUs will be subject to federal New Source Performance Standard (NSPS) requirements.

Public hearings will be simultaneously held on this plan and proposed Regulation No. 1146, as indicated in Section II above.

### **IV. Annual Mercury Mass Emissions Limitations for Delaware's Existing Coal-Fired Electric Generating Units**

Annual EGU mercury mass emissions caps for individual states are specified in 40 CFR Part 60.24. For

Delaware, §60.24 specifies a statewide mercury mass emissions cap of 0.072 tons/yr (2304 oz/yr) for the years 2010 through 2017, and a state mercury mass emissions cap of 0.028 tons/yr (896 oz/yr) for 2018 and thereafter.

The proposed state Regulation No. 1146 applies to Delaware's existing coal-fired electric generating units (EGUs) with nameplate ratings of 25 MW or greater. For each of these individual EGUs, the proposed regulation specifies annual mercury mass emissions caps. For the years 2009 through 2012, the total of the mercury mass emissions caps for all of the identified EGUs in the proposed regulation is 2189 oz/yr (0.068 ton/yr). For the year 2013 and thereafter, the total of the mercury mass emissions caps for all of the identified EGUs in the proposed regulation is 869 oz/yr (0.027 tons/yr).

Delaware will not participate in the Clean Air Mercury Rule (CAMR) cap-and-trade program. No interstate or intrastate trading or averaging is permitted in Delaware's proposed regulation for compliance with the mercury mass emissions limits of the proposed regulation. There are no banking provisions in the proposed regulation. The proposed regulation states that compliance with a unit's mercury annual emissions cap may not be achieved through use of acquiring mercury allowances under any state or federal program.

Individual EGU annual mercury mass emissions limits are identified in Table 1.

**Table 1 Annual Mercury Mass Emissions Limits**

<u>Facility/Unit</u>	<u>Mercury Mass Emissions Limit 2009 – 2012 (ounces)</u>	<u>Mercury Mass Emissions Limit 2013 and thereafter (ounces)</u>
Edge Moor Unit 3	266	106
Edge Moor Unit 4	462	183
Indian River Unit 1	207	82
Indian River Unit 2	216	86
Indian River Unit 3	337	134
Indian River Unit 4	700	278
<b>Total</b>	<b>2189</b>	<b>869</b>

**V. Inventory of Existing Coal-Fired Electric Steam Generating Units [40 CFR §60.25(a)]**

In accordance with 40 CFR Part 60, Subpart B, §60.25(a), the State Plan must include "an inventory of all existing designated coal-fired EGUs including emissions data for the designated pollutant." Delaware's mercury budget covers six (6) existing designated coal-fired EGUs operated by 2 (two) facilities. The inventory of the existing designated coal-fired EGUs are presented in Table 2 below. Mercury emission from these units will be limited as provided for in Regulation No. 1146 (see Appendix C), and as explained in Section IV above.

**Table 2. Inventory of Existing Designated Coal-fired Electric Steam Generating Units in Delaware**

<u>FACILITY NAME</u>	<u>UNIT ID</u>	<u>Capacity MW</u>	<u>FACILITY ADDRESS</u>
<u>NRG Indian River</u>	<u>1</u>	<u>82</u>	<u>Millsboro, DE</u>
	<u>2</u>	<u>82</u>	
	<u>3</u>	<u>177</u>	
	<u>4</u>	<u>442</u>	
<u>Conectiv Edgemoor</u>	<u>3</u>	<u>84</u>	<u>Wilmington, DE</u>
	<u>4</u>	<u>154</u>	

**VI. Compliance Schedule for Coal-fired EGUs [40 CFR §60.24(a)]**

An owner or operator of each designated existing coal-fired EGU must achieve compliance with the quarterly and annual emission limitations specified in Regulation No. 1146 on a unit-by-unit basis. The owners or operators of EGUs subject to Reg. 1146 shall comply with all applicable Reg. 1146 requirements and this Section 111(d) State Plan on or before January 1, 2009. Mercury allowances are not created under Regulation No. 1146 of this 111(d) plan, and no allowances under any program may be used or traded.

**VII. Monitoring, Recordkeeping, and Reporting Requirements**

Under 40 CFR §60.24, EGUs are required to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR Part 75 with regard to mercury mass emissions. The proposed regulation requires demonstration of compliance with the proposed regulation's mercury mass emissions limitations through the use of continuous emissions monitoring systems that are installed, calibrated, operated, and certified in accordance with the requirements of 40 CFR Part 75.

Further, the proposed regulation requires compliance with the monitoring, reporting, and recordkeeping requirements of 40 CFR Part 60, which would include: §60.4170, General Requirements; §60.4171, Initial Certification and Recertification Procedures; §60.4172, Out of Control Periods; §60.4173, Notifications; §60.4174, Recordkeeping and Reporting; §60.4175, Petitions; §60.4176, Additional Requirements to Provide Heat Input Data; and Performance Specification 12A.

In addition to the requirements of 40CFR Part 60 and 40 CFR Part 75, the proposed regulation requires the maintenance of all relevant reports, test results, and records for a period of at least 5-years.

The proposed regulation also requires submittal of semi-annual reports, including, as a minimum, the following information:

- Tabulation of emissions monitoring results reduced to 1-hr averages.
- Calendar year-to-date summation of mass emissions.
- Identification and cause of any invalid data averages.
- Records of repairs, adjustment, or maintenance of the monitoring system.
- Results of all tests, audits, and recalibrations performed during the period.
- Certification statement, and signature of the designated representative.

**VIII. Legal Authority to Implement the State Plan [40 CFR §60.26(a)]**

Pursuant to 40 CFR §60.26, the Section 111(d) State Plan for existing EGUs must demonstrate that States have legal authority to implement the plan. The demonstration of legal authority must show that the Department is authorized to (a) adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's relevant annual EGU mercury budget under paragraph (h)(3) of this section; (b) to enforce applicable laws, regulations, standards, compliance schedules and seek injunctive relief; (c) to obtain information necessary to determine whether designated facilities are in compliance with applicable laws and regulations, standards and compliance schedules. The State Plan must also demonstrate that the Department has sufficient legal authority to require the installation, maintenance and use of emission monitoring devices by the owners and operators of designated EGU facilities and to require recordkeeping and reporting provisions of Part 75 of this Chapter with regards to mercury mass emissions including the submission of periodic emission reports. The legal demonstration must also show that sufficient legal authority exists to carry out inspections and to conduct testing of designated EGU facilities.

7 Del.C., Chapter 60, and Delaware's air permitting regulations No. 2 and 30 (See Appendix D-1) demonstrate that DNREC has the necessary legal authority to adopt and carry out this plan. These documents are included at Appendix D to this plan.

**APPENDIX A:**

70 FR 28606, Clean Air Mercury Rule (CAMR)

- See 70 FR 28606, May 18, 2005.

## APPENDIX B:

### Documentation Of The Public Participation Process

- To be inserted after the public process is complete.

## APPENDIX C:

### Regulation No. 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation

- To be inserted after Regulation No. 1146 is finalized. Regulation No. 1146 is being proposed in conjunction with this plan.

## APPENDIX D:

### 7 Del.C., Chapter 60, and Regulation No. 2 and Regulation No. 30 of the State of Delaware "Regulations Governing the Control of Air Pollution"

#### APPENDIX D:

Appendix D-1:7 Del.C., Chapter 60

Appendix D-2:Regulation No. 2

Appendix D-3:Regulation No. 30

- 7 Del.C., Chapter 60. See <http://www.delcode.state.de.us>
- Regulation No. 2 and Regulation No. 30. See [http://www.dnrec.state.de.us/air/aqm\\_page/regs.htm](http://www.dnrec.state.de.us/air/aqm_page/regs.htm)

CAA SECTION 111(d) STATE PLAN FOR THE CONTROL OF MERCURY EMISSIONS FROM COAL-FIRED ELECTRIC STEAM GENERATING UNITS (EGUs)

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## **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 2701(d) (7 Del.C. §2701(d))

**SAN #2006-17**

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

3203 Seasons and Area Closed to taking Horseshoe Crabs.

3207 Horseshoe Crab Dredging Restrictions.

3210 Horseshoe Crab Reporting Requirements.

3211 Horseshoe Crab Commercial Collecting Permit Eligibility and Renewal Requirements.

3214 Horseshoe Crab Annual Harvest Limit.

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

The Department is proposing two options, either of which would meet the compliance requirements of Addendum IV to the Interstate Fishery Management Plan for Horseshoe Crabs which is administered by the Atlantic States Marine Fisheries Commission (ASMFC). **Option 1** would prohibit the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7 for two years, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. Commercial collectors of

horseshoe crabs will have to report their landings daily during the open season in order to facilitate quota monitoring. Permit renewal requirements will be aligned with other shellfish licenses. Specifically, horseshoe crab commercial beach collecting permits must be renewed annually by December 31 of each calendar year or the person holding the collecting permit forfeits their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years. This option permits harvest to resume after the period of time that the shorebirds normally have migrated north of Delaware that depend on horseshoe crab eggs as a food source, and after a significant portion of the horseshoe crab spawning has occurred in a normal year. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year.

**Option 2** would prohibit all harvest and landing of horseshoe crabs in Delaware for a period of two years to begin in calendar year 2007. This option is more restrictive than required in Addendum IV, but individual states may be more restrictive, but not less restrictive than that called for in approved plans administered by the ASMFC. This option would end all horseshoe crab harvest in Delaware for a two-year period.

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

This regulation will be re-considered in light of horseshoe crab population trends and further action by the Atlantic States Marine Fisheries Commission beginning in 2009.

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

§103, §1902, §2701 and §2703 of 7 **Delaware Code** and Chapter 15 of 7 **Delaware Code**.

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

N/A

**6. Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302)739-3441 or by e-mail to. A public hearing on these two proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:30 PM on September 28, 2006. Written comments for the hearing record should be addressed to Roy Miller, Hearing Officer, at the above address or via e-mail to roy.miller@state.de.us and will be accepted until 4:30 PM October 3, 2006.

**7. Prepared by:**

Roy W. Miller 302-739-9914 August 9, 2006

**3200 Horseshoe Crabs (Option 1: 3203, 3207, 3210, 3211 and 3214; Option 2: 3215)**

**Option 1**

**3203 Seasons and Area Closed to taking Horseshoe Crabs (Formerly S-51 and HC-3) (Penalty Section 7 Del.C. §1912)**

1.0 It shall be unlawful for any person to dredge or attempt to collect by means of a dredge horseshoe crabs or parts thereof from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on ~~May 4~~ January 1 and continuing through midnight, June 30, next ensuing. After June 30 in any given calendar year, it shall be unlawful to dredge or attempt to collect by means of a dredge female horseshoe crabs.

2.0 It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect adult male horseshoe crabs on Tuesday and Thursday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on June 30.

3.0 It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs or parts thereof from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on ~~May 4~~ January 1 and continuing through midnight, June 7, next ensuing. It shall be lawful, during a period beginning at 12:01 a.m. on June 8 and continuing through midnight on June 30, for persons with valid horseshoe crab collecting permits

and eel licensees and their alternates to collect male horseshoe crab adults on Mondays, Wednesdays and Fridays from such private lands.

4.0 It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

~~5.0 It shall be unlawful for any person to collect or dredge or to attempt to collect or dredge horseshoe crabs at any time prior to May 1 in any given year after the date the Department determines 35% of the annual quota of horseshoe crabs, approved for Delaware by the Atlantic States Marine Fisheries Commission, is landed.~~

**1 DE Reg 1412 (4/1/98)**

**7 DE Reg. 220 (8/1/03)**

**3207 Horseshoe Crab Dredging Restrictions (Formerly S-55 and HC-7) (Penalty Section 7 Del.C. §1912)**

1.0 It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased ~~S~~shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

2.0 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than 1500 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

3.0 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on ~~May 4 January 1~~ and continuing through midnight, June 30, next ensuing.

4.0 It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit."

**3210 Horseshoe Crab Reporting Requirements (Formerly S-57 and HC-10) (Penalty Section 7 Del.C. §1912)**

1.0 It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a ~~weekly~~ daily basis. Said ~~weekly~~ daily reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a ~~weekly~~ daily report on his/her harvest of horseshoe crabs to the Department shall ~~submit said report on or before 4:30PM on the Monday following the week covered by said report. If Monday is a legal State holiday, said report shall be submitted on or before 4:30PM on Tuesday, next ensuing. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. phone in said report within 24 hours of said harvesting.~~ Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number ~~and sex~~ of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

2.0 Any person who fails to submit a ~~weekly~~ daily report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department.

3.0 In addition to the requirement to phone in ~~weekly~~ daily catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a

commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

### **3211 Horseshoe Crab Commercial Collecting Permit Eligibility and Renewal Requirements (Formerly S-59 and HC-11) (Penalty Section 7 Del.C. §1912)**

1.0 The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit in 1998 may apply for renewal of their horseshoe crab commercial collecting permit by ~~April 1~~ December 31 each year. If any person holding a horseshoe crab commercial collecting permit from the previous year fails to apply for renewal of their horseshoe crab commercial collecting permit by ~~April 1~~ December 31 in any given calendar year, they forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in ~~the future~~ subsequent years.

### **3214 Horseshoe Crab Annual Harvest Limit (Formerly S-62 and HC-14) (Penalty Section 7 Del.C. §1912)**

1.0 The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be ~~150,000~~ 100,000 male horseshoe crabs for a period of two years beginning January 1, 2007 or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, whichever number is less.

2.0 When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

#### **Option 2**

### **3215 Horseshoe Crab Harvest Moratorium**

1.0 Under the Department's authority granted in §2701(a) of 7 Del.C. to administer a program for the conservation and management of horseshoe crabs, it shall be unlawful for anyone, except as specified in §2702 and §2704(b) of 7 Del.C., to collect by means of a dredge or to collect or attempt to collect by any means any horseshoe crab or parts thereof from Delaware lands or waters for a period of two consecutive years beginning January 1, 2007. It shall further be unlawful to land from a vessel in Delaware any horseshoe crabs taken from outside of Delaware's jurisdiction for a period of two years beginning January 1, 2007. For the two-year term of this harvest moratorium, all other horseshoe crab regulations are suspended, except for Horseshoe Crab Regulation 3202. Those persons holding horseshoe crab collecting permits in 2006 shall retain their eligibility to apply for a commercial horseshoe crab collecting permit once the fishery is re-opened and must do so by December 31 of each year once the fishery is re-opened, or forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years.

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## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 2701(d) (7 Del.C. §2701(d))

SAN #2006-14

1. **Title of the Regulations:**  
3711 Conch Minimum Size Limits  
3712 Commercial Conch Dredge Licenses  
3756 Lobsters - Pot Design

2. **Brief Synopsis of the Subject, Substance and Issues:**  
To raise the minimum size of knobbed whelks (knobbed conchs) that may be harvested from five inches to six inches in one-quarter inch increments over a four-year period. This will result in increased conservation of spawning stock biomass for a resource that is showing signs of over-exploitation. More conchs will have reached maturity prior to being subject to harvest with the increase in the minimum size limit. This will likely depress landings until the conchs

previously subject to harvest have grown from five inches to the newly proposed legal size of six inches. The Department estimates it will take 3-4 years for a five-inch conch to reach 6 inches.

To cap the number of conch dredge licenses that the Department may issue to the number issued during the period 2003-2005. This cap will be maintained for a five-year period. This will prevent a potential doubling of fishing effort that could occur (based on the number of license applicants) if the number of available licenses were not capped and will help limit increases in mortality caused by fishing which the Department has determined is already excessive for the long-term health of this resource. Those license applicants who have been on the five-year waiting list will be unable to obtain a conch dredge license for a minimum of five additional years under this proposed regulation.

The rectangular escape vent in the parlor of lobster pots would be increased from the present 1 15/16ths inches by 5 3/4 inches to 2 inches by 5 3/4 inches. If a circular vent is used, it is proposed that the minimum inside diameter be 2 5/8ths inches. These vent dimensions would be consistent with federal requirements for lobster pots set in federal waters in our area. The overwhelming majority of Delaware's lobster landings are from federal waters and the proposed increase in vent size is considered to be the appropriate escape vent dimensions with the minimum lobster size limits (3 3/8s inch carapace length) now in effect in Delaware and federal waters offshore of Delaware

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

N/A

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

§1902, §2804; and §2505 of 7 Delaware Code.

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

N/A

**6. Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302)739-3441 or by e-mail to roy.miller@state.de.us. A public hearing on these two proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:30 PM on October 17. Written comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901, or by e-mail to Lisa.Vest@state.de.us and will be accepted until 4:30 PM October 20, 2006.

**7. Prepared by:**

Roy W. Miller 302-739-9914 August 11, 2006

**3700 Shellfish Regulations (3711, 3712 and 3755)**

**3711 Conch Minimum Size Limits (Formerly S-48) (Penalty Section 7 Del.C. §1912)**

1.0 It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatus*, that measures less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.

2.0 Notwithstanding the provisions of paragraph 1.0, a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.

3.0 It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than ~~five (5) inches in length or 2 3/4 inches in diameter at the whorl.~~ 5 1/4 inches in 2007, 5 1/2 inches in 2008, 5 3/4 inches in 2009, and six (6) inches in length in 2010. Beginning in 2010, the minimum length shall remain 6 inches thereafter until changed by regulation. The minimum diameter at the whorl shall be no less than 3 inches in 2007, 3 1/4 inches in 2008, 3 1/4 inches in 2009 and 3 1/2 inches in 2010 and shall remain 3 1/2 inches thereafter until changed by regulation.

**3712 Commercial Conch Dredge Licenses (Penalty Section 7 Del.C. § 1912)**

1.0 Pursuant to §2803(c) of 7 Del.C. the Department shall not issue any new conch dredge licenses for a period of 5 years to begin January 1, 2006. Licenses may continue to be issued pursuant to §2803(d) of 7 Del.C.

**3756 Lobsters - Pot Design (Formerly S-23) (Penalty Section 7 Del.C. §1912)**

1.0 It shall be unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than 4 15/16 two (2) inches by 5 3/4 inches located in the parlor section of each pot or trap, or if a circular escape vent is used in the parlor section of any lobster pot or trap, it shall be unlawful to use any circular vent that is less than 2 5/8 inches inside diameter.

2.0 It shall be unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 3/4 inches by 3 3/4 inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.

3.0 It shall be unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

**DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

**Proposed Total Maximum Daily Loads (TMDLs) for Bacteria for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds, Delaware**

**NOTICE OF PUBLIC HEARINGS****Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct Public Hearings regarding Total Maximum Daily Load (TMDL) Regulations for bacteria for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

The proposed Bacteria TMDL Regulations for the Chester River, Choptank River, Marshyhope Creek, and Pocomoke River Watersheds are necessary because the existing TMDL regulations that included both nutrient and bacteria allocations, promulgated on January 11, 2006, are being revised to include nutrients only. This change is necessary due to a clarification in the interpretation of the EPA-required bacteria water quality standards that result in changes to the bacteria allocations.

Draft TMDL Regulations for these watersheds were published in the June 1, 2006 issue of the Delaware Register of Regulations and were reviewed during public workshops held in June, 2006. All comments received at the workshops and during the June 1 through 30 comment period were considered by the Department. Comments, as well as additional technical analyses, resulted in minor changes to the proposed TMDL Regulations and enhancements to the technical support documents. The revised proposed TMDL Regulations are published, following this notice, in this issue of the Register.

**Possible Terms of the Agency Action**

Following adoption of the Proposed TMDL Regulations, DNREC will develop Pollution Control Strategies (PCSs) designed to achieve the necessary load reductions. PCSs will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

**Statutory Basis or Legal Authority to Act**

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 et. seq., as amended.

**Other Legislation That May be Impacted**

None

**Notice of Public Hearings and Comment Period**

The Public Hearing for the Murderkill River and Appoquinimink River Watersheds will be held Wednesday, September 20, 2006 at 6:00 p.m. in the DNREC Secretary's Conference Room, Richardson and Robbins Building, 89 Kings Highway, Dover.

The Public Hearing for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) will be held Thursday, September 21, 2006 at 6:00 p.m. at the University of Delaware Research and Education Center, 16483 County Seat Highway, Georgetown, DE.

The hearing records for these watersheds will remain open until 4:30 p.m., Monday, October 2, 2006. Please send written comments to Sam Myoda, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464; facsimile: (302) 739-6140, email: (samuel.myoda@state.de.us). All written comments must be received by 4:30 p.m., Monday, October 2, 2006. Electronic submission is preferred.

Copies of the proposed regulations and TMDL reports and technical support documents for these watersheds are available by mail from Sam Myoda, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, or from the Internet at the following URL:

<http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm>

**Prepared By:**

John Schneider, Watershed Assessment Section, 739-9939

**7403 Total Maximum Daily Load (TMDL) for the Appoquinimink River Watershed, Delaware****1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Appoquinimink River Watershed are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Appoquinimink River Watershed on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for enterococcus bacteria.

**2.0 Total Maximum Daily Load (TMDL) Regulation for the Appoquinimink River Watershed**

Article 1. The nonpoint source bacteria load (LA) in the fresh water portion of the Appoquinimink River Watershed shall be reduced by 9 percent from the 1997-2005 baseline level.

Article 2. The nonpoint source bacteria load (LA) in the marine water portion of the Appoquinimink River

Watershed shall be reduced by 69 percent from the 1997-2005 baseline level.

Article 3. The Municipal Separate Storm Sewer Systems (MS4) point source bacteria load (WLA) in the fresh water portion of the Appoquinimink River Watershed shall be reduced by 10 percent from the 1997-2005 baseline level.

Article 4. The Municipal Separate Storm Sewer Systems (MS4) point source bacteria load (WLA) in the marine water portion of the Appoquinimink River Watershed shall be reduced by 68 percent from the 1997-2005 baseline level.

Article 5. The Middletown-Odessa-Townsend (MOT) wastewater treatment plant point source bacteria loading (WLA) will be based on an effluent, 30-day geometric mean concentration level not to exceed 33 CFU enterococcus/100 ml.

Article 6. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 5 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Appoquinimink River Watershed.

Article 7. Implementation of this TMDL Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Team, other stakeholders, and the public.

### **7427 Total Maximum Daily Load (TMDL) for the Murderkill River Watershed, Delaware**

#### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River Watershed are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Murderkill River Watershed on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for enterococcus bacteria.

#### **2.0 Total Maximum Daily Load (TMDL) Regulation for the Murderkill River Watershed**

Article 1. The nonpoint source bacteria load (LA) in the fresh water portion of the Murderkill River Watershed shall be reduced by 31 percent from the 1997-2005 baseline level.

Article 2. The nonpoint source bacteria load (LA) in the marine water portion of the Murderkill River Watershed shall be reduced by 61 percent from the 1997-2005 baseline level.

Article 3. All point source bacteria loading (WLAs) in the Murderkill River Watershed will be based on an effluent, 30 day-geometric mean concentration level not to exceed 33 CFU enterococcus/100 ml.

Article 4. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Murderkill River Watershed.

Article 5. Implementation of this TMDL Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Team, other stakeholders, and the public.

### **7428 Total Maximum Daily Load (TMDL) for the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), Delaware**

#### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control

(DNREC) has shown that the waters of the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Inland Bays Drainage Basin on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for enterococcus bacteria.

## **2.0 Total Maximum Daily Load (TMDL) Regulation for the Inland Bays Drainage Basin**

Article 1. The nonpoint source bacteria load (LA) in the fresh water portion of the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) shall be reduced by 42 percent from the 2000-2005 baseline level.

Article 2. The nonpoint source bacteria load (LA) in the marine water portion of the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) shall be reduced by 11 percent from the 2000-2005 baseline level.

Article 3. All point source bacteria loading (WLAs) in the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) will be based on an effluent, 30 day-geometric mean concentration level not to exceed 33 CFU enterococcus/100 ml until all point sources are eliminated as required by the 1998 Inland Bays Nutrient TMDL Regulation.

Article 4. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds).

Article 5. Implementation of this TMDL Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Team, other stakeholders, and the public.

## **7429 Total Maximum Daily Loads (TMDLs) for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), Delaware**

### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds) are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds) on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for enterococcus bacteria.

# PROPOSED REGULATIONS

## **2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Chesapeake Bay Drainage Basin**

Article 1. The nonpoint source bacteria load (LA) in the entire Chester River Watershed shall be reduced by 37 percent from the 1997-2004 baseline level.

Article 2. The nonpoint source bacteria load (LA) in the entire Choptank River watershed shall be reduced by 29 percent from the 1997-2005 baseline level.

Article 3. The nonpoint source bacteria load (LA) in the entire Marshyhope Creek watershed shall be reduced by 21 percent from the 1997-2005 baseline level.

Article 4. The nonpoint source bacteria load (LA) in the entire Pocomoke River watershed shall be reduced by 26 percent from the 1997-2004 baseline level.

Article 5. The nonpoint source bacteria load (LA) in the entire Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, and Broad Creek Watersheds shall be reduced by 2 percent from the 2000-2005 baseline level.

Article 6. All point source bacteria loading (WLAs) in the entire Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds) will be based on an effluent, 30-day geometric mean concentration level not to exceed 100 CFU enterococcus/100 ml.

Article 7. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 6 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds).

Article 8. Implementation of this TMDL Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with Tributary Action Teams, other stakeholders, and the public.

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

3100 Delaware Board of Funeral Services

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 Del.C. §3105(a)(1))

24 DE Admin. Code 3100

### PUBLIC NOTICE

The Delaware Board of Funeral Services in accordance with 24 Del.C. §3105(a)(1) has proposed changes to Regulation 9.0 to address licensee's access to online renewal of licenses and online attestation of completion of continuing education courses, and set forth procedures for audit and verification of completed continuing education. In addition, the proposed changes revise the rules to give the Board the ability to determine the appropriate action with respect to licensees who fail to comply with the continuing education requirements as of the time of renewal. Finally, the proposed changes eliminate the Continuing Education Committee of the Board and clarify that the Board will not review requests for approval of continuing education credits from programs that are automatically approved by the Board.

A public hearing will be held on October 25, 2006 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

(Break in Continuity of Sections)

**9.0 Continuing Education Regulations****9.1 Board Authority**

9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

**9.2 Requirements**

9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal.

9.2.2 All CE credit hours must further the licensee's skills and understanding in the field of funeral services. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

9.2.23 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

~~9.2.3 Upon application for renewal of a license, a funeral director licensee shall submit to the Board proof of completing the required number of CE credit hours.~~

**9.3 Waiver of the CE Requirement**

9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health or military service. Application for exemption shall be made in writing to the Board by the applicant for renewal. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

**9.4 Continuing Education Program Approval**

9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

9.4.3 Programs approved by the Academy of Funeral Service Practitioners (AFSP) or state boards that license funeral directors are automatically approved and need not be submitted to the Board. ~~Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.~~

~~9.4.34~~ Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

~~9.4.45~~ The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.
- Business management concepts relating to delivery of goods and services.
- Technical aspects of the profession.
- Public relations.
- After care counseling.

~~9.4.56~~ Application for CE program approval shall include the following:

~~9.4.56.1~~ Date and location.

~~9.4.56.2~~ Description of program subject, material and content.

~~9.4.56.3~~ Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

~~9.4.56.4~~ Name of instructor(s), background, expertise.

# PROPOSED REGULATIONS

9.4.56.5 Name and position of person making request for program approval.

9.4.67 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.78 The CE credits shall be valid for the biennial renewal cycle in which they are approved. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.89 Upon request, the Board shall mail a current list of all previously approved programs.

## 9.5 Continuing Education Committee

9.5.1 The Board of Funeral Services shall appoint a committee known as the Continuing Education Committee. The Committee shall consist of the following who shall elect a chairperson:

9.5.1.1 One (1) Board member (non-licensed).

9.5.1.2 One (1) non-Board member who shall be a licensed funeral director who is owner/operator of a funeral establishment.

9.5.1.3 One (1) non-Board member who shall be a licensed funeral director who does not own or operate a funeral establishment.

9.5.2 Membership on this Committee shall be on a rotating basis, with each member serving a three year term and may be eligible for reappointment. The Committee members shall continue to serve until a new member is appointed.

9.5.3 The Continuing Education Committee shall oversee matters pertaining to continuing education and make recommendations to the Board with regard to approval of submitted programs for CE by licensees and with regard to the Board's review of audited licensees. The Board shall have final approval on all matters.

## 9.65 Certification of Continuing Education - Verification and Reporting

9.65.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.65.2 Verification of completion of an independent study program will be made with a student transcript.

9.65.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. Proof shall consist of completed CE form provided by the Board and shall be filed with the Board on or before thirty (30) days prior to the expiration date of the biennial renewal period. A licensee who carries over credits from a prior licensure period must also maintain original certificates of attendance for all CE programs for any period from which credits are carried over.

9.5.4 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 9.2.1.

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

9.5.4.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 9.3.5.3.

9.6.45.5 Applications for renewal may be audited by the Board to determine whether or not the recommended requirements of continuing education have been met by the licensee. Random audits will be performed by the Board to ensure compliance with the CEU requirements.

9.5.5.1 The Board will notify licensees within sixty (60) days after August 31 that they have been selected for audit.

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

9.5.5.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 9.4, which may include, but is not limited to, the following information:

- Proof of attendance;
- Date of CE course;
- Instructor of CE course;
- Sponsor of CE course;
- Title of CE course; and

~~9.5.5 If a licensee is found to be non-compliant in continuing education, the licensee's license shall lapse at the expiration of the present licensing period. The Board shall reinstate such license within twelve (12) months of such lapse upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.~~

- ~~• Number of hours of CE course.~~

~~9.5.6 If a licensee fails to meet the CE requirement at the time of renewal, the Board may impose discipline as permitted under Section 3114. In its discretion, the Board may permit the licensee to obtain the CE credits within a time period prescribed by the Board while maintaining an active license.~~

**5 DE Reg. 606 (9/1/01)**

**9 DE Reg. 262 (8/1/05)**

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Funeral Services is available at:**

**<http://dpr.delaware.gov/boards/funeralservices/index.shtml>**

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## DIVISION OF PROFESSIONAL REGULATION

### 3300 Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a) (24 Del.C. §3106(a))

24 DE Admin. Code 3300

### NOTICE OF PUBLIC HEARING

The Delaware Board of Veterinary Medicine will hold a hearing pursuant to 24 Del.C. §3306(a)(1) and 29 Del.C. §101 on Tuesday, October 10, 2006, at 1:00 P.M. in Conference Room A, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware Division of Professional Regulation Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904.

Persons may present their views in writing by mailing their views to the Board at the above address prior to the hearing, and the Board will consider those responses received before 10:00 a.m. on September 29, 2006, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

### 3300 Board of Veterinary Medicine

#### 1.0 ~~Direct~~ Supervision (24 Del.C. §3303(10) and (11))

1.1 ~~Direct~~ Supervision refers to the oversight of any person performing non-licensed support activities (support personnel) and/or licensed veterinary technician activities by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support and/or veterinary technician activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel or veterinary technicians by the public.~~The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2 which constitute the practice of veterinary medicine under 24 Del.C. §3302(6) must be performed under direct supervision. Direct supervision of support personnel also includes Supervision of veterinary technicians and support personnel is based on the following:~~

1.1.1 The initial examination of the animal by the veterinarian is to be performed prior to the delegation of work to be performed by support or veterinary technician personnel. The veterinarian may, however, authorize support or veterinary technician personnel to administer emergency measures prior to the initial examination.

1.1.2 ~~The development of a treatment plan by the veterinarian that shall develop a treatment plan to be referenced by support and/or veterinary technician personnel.~~

1.1.3 ~~The authorization by the veterinarian of~~ must authorize the work to be performed by support and/or veterinary technician personnel. Whether tasks are appropriate to be delegated may differ from case to case.

1.2 At no time may support personnel perform the following activities (24 Del.C. §3303(10)):

1.2.1 Diagnosing.

1.2.2 Prognosing

1.2.3 Prescribing.

1.2.34 ~~Inducing Anesthesia.~~

1.2.45 Performing Surgery.

1.2.56 Administration of Rabies Vaccinations.

1.2.67 Operative dentistry and oral surgery.

1.2.78 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.2.89 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters; see Section 1.5.1).

1.2.910 Splinting or casting of broken bones in other than emergency situations.

1.2.4011 Euthanasia.

1.2.4412 Issue health certificates.

4.2.12 ~~Perform brucellosis, equine infectious anemia and tuberculosis tests and other tests which are regulated by federal and state guidelines.~~

1.3 At no time may licensed veterinary technicians perform the following activities (24 Del.C. §3303(11)):

1.3.1 Diagnosing.

1.3.2 Prognosing.

1.3.3 Prescribing.

1.3.4 Performing Surgery (excluding the tacking/suturing of intravenous and urinary catheters and nasal cannulae to skin).

1.3.5 Administration of Rabies Vaccinations.

1.3.6 Operative dentistry and oral surgery.

1.3.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.3.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters; see Section 1.6.2).

1.3.9 Splinting or casting of broken bones in other than emergency situations.

1.3.10 Euthanasia.

1.3.11 Issue health certificates.

1.4 Levels of Supervision. All acts by support personnel and veterinary technicians not prohibited by Rule 1.2 and Rule 1.3 which constitute the practice of veterinary medicine under 24 Del. C. § 3302 (6) must be performed under the supervision of a licensed veterinarian(s). Levels of supervision are to include:

1.4.1 Immediate Supervision – A licensed veterinarian is within direct eyesight and/or hearing range.

1.4.2 Direct Supervision – A licensed veterinarian is physically present on the premises and is readily available.

1.4.3 Indirect Supervision – A licensed veterinarian is not on the premises but is able to perform the duties of a veterinarian by maintaining communication with and is accessible to support personnel, such as by electronic means.

1.5 If the veterinarian concludes based on the initial examination (required by paragraph 1.1.1) that delegation is appropriate, support personnel may perform the following tasks only under the following supervision:

1.5.1 Immediate supervision: intubation, urethral catheterization (except in the case of known urinary blockage or pre-existing urethral or urinary bladder disease); dental extractions with no periosteal elevation, no sectioning of tooth and no resectioning of bone.

1.5.2 Direct supervision: anesthesia maintenance and dental procedures including, but not limited to, removal of calculus, soft deposits, plaque and stains, smoothing, filing, polishing of teeth.

1.6 If the veterinarian concludes based on the initial examination (required by paragraph 1.1.1) that delegation is appropriate, veterinary technicians may perform the following tasks only under the following supervision:

1.6.1 Immediate supervision: induction of anesthesia.

1.6.2 Direct supervision: intubation, anesthesia maintenance; arterial catheterization; urethral catheterization (except in the case of known urinary blockage or pre-existing urethral or urinary bladder disease); cystocentesis; dental extractions with no periosteal elevation, no sectioning of tooth and no resectioning of bone; and dental procedures including, but not limited to, removal of calculus, soft deposits, plaque and stains, smoothing, filing, polishing of teeth.

1.7 Veterinarians (24 Del.C. §3315(a)) and veterinary technicians (24 Del.C. §3320 (a)) who are temporarily licensed shall be under the direct supervision of a licensed veterinarian.

1.8 Activities that may be performed under emergency conditions. Under conditions of emergencies, the following activities, which would be otherwise prohibited in the absence of veterinary supervision, may be performed by veterinary technicians or support personnel prior to the veterinarian's initial examination:

1.8.1 application of tourniquets and/or pressure bandages to control hemorrhage.

1.8.2 administration of pharmacological agents, only to be performed after communication with a veterinarian authorized to practice in Delaware, and such veterinarian is either present or enroute to the distressed animal.

1.8.3 administration of parenteral fluids.

1.8.4 resuscitative procedures.

1.8.5 application of temporary splints or bandages to prevent further injury to bones or soft tissues.

1.8.6 application of appropriate wound dressings and external supportive treatment in severe wound and burn cases.

1.8.7 external supportive treatment in heat prostration cases.

1.8.8 and any other reasonable treatments necessary to an animal's welfare in an emergency situation.

## **2.0 Unprofessional Conduct for Veterinarians (24 Del.C. §3313 §3316(a)(1))**

2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following:

2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 or allowing licensed veterinary technicians to perform the acts forbidden under Section 1.3 of the Rules and Regulations.

2.1.2 Allowing support personnel to perform tasks in Section 1.5 of the Rules and Regulations without the required direct supervision as specified in Section 1.1 of the Rules & Regulations. supervision or allowing veterinary technicians to perform the tasks in Section 1.6 without the specified supervision.

2.1.3 Failing to be accessible to support or veterinary technician personnel by electronic means in a reasonable timeframe to provide off-site supervision for activities requiring indirect supervision as required by Section 1.4 of the Rules and Regulations.

2.1.4 Failing to arrange for supervision by another licensed veterinarian when not able to provide supervision as required by Section 1.4 of the Rules and Regulations.

2.1.5 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.

2.1.46 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.

2.1.57 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.

2.1.68 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

2.1.79 Destruction of any part of a patient's records before a minimum of three (3) years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological results.

2.1.810 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 Del.C. §1325.

2.1.810.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing sanitary conditions and convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

2.1.810.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.810.3 Failure to take precautions to prevent the spread of communicable diseases in housing animals.

~~2.1.9 Leaving an animal during the maintenance stage of anesthesia.~~

~~2.1.4011~~ Improper labeling of prescription drugs. The package or label must contain:

~~2.1.4011.1~~ Name, strength, and quantity of the drug, and date dispensed;

~~2.1.4011.2~~ Usage directions.

2.1.4412 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.4213 Misrepresenting continuing education hours to the Board.

2.1.4314 Failure to obey a disciplinary order of the Board.

2.1.4415 Prescribing medication without examining the animal(s) within a period of one year.

2.1.4516 Advertising an emergency hospital or clinic or emergency services without including in the advertisement the hours during which such emergency services are provided and the availability of the veterinarian who is to provide the emergency services, or failing to provide such services during the hours advertised. The availability of the veterinarian who is to provide emergency service shall be specified as either "veterinarian on premises" or "veterinarian on call" The phrase "veterinarian on call" shall mean that a veterinarian is not present at the hospital, but is able to respond within a reasonable time to requests for emergency services and has been designated to so respond.

### 3.0 Privileged Communications (24 Del.C. §~~3343~~16(a)(7))

#### 3.1 Privileged Communications.

Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal.

The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

### 4.0 Veterinary Premises & Equipment (24 Del.C. §~~3343~~16(9))

4.1 The animal facility shall be kept clean. A regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.

4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as

necessary to keep the animals clean.

4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.

4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.

4.8 Proper refrigeration and sterilization equipment should be available.

4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.

4.10 The elimination or effective control of vermin shall be mandatory.

### **5.0 Qualification for Veterinary Licensure by Examination As A Veterinarian (24 Del.C. ~~§3307~~§3313) and by Reciprocity (24 Del.C. § 3314).**

5.1 The applicant shall file the following documents:

5.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

5.1.2 Official transcript from an AVMA approved veterinary college or university ~~or its equivalent (Educational Commission for Foreign Veterinary Graduates)~~. If an applicant is not a graduate of an AVMA-accredited veterinary school or college, the applicant must possess either a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG), or its successor, or a Certificate of Qualification issued by the Canadian Veterinary Medical Association, or its successor.

5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

5.1.4 North American Veterinary Licensing Examination (NAVLE) score or its successor or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the reciprocity applicant meets the statutory exemptions in 24 **Del.C.** §33093314(b).

5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware"

5.2 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

### **6.0 Character of Examination for Veterinarians - North American Veterinary Licensing Examination (NAVLE) (24 Del.C. §3306)**

6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) ~~after November 2000~~ or its successor.

6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

### **7.0 Reciprocity for Veterinarians (24 Del.C. ~~§3309~~§3314)**

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the ~~same~~ application requirements set forth in 24 **Del.C.** ~~§3309~~§3314.

### **8.0 Licensure Renewal (24 Del.C. ~~§3314~~§3309)**

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by

the Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0 for veterinarians and Section 14 for veterinary technicians. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0 for veterinarians and Section 14 for veterinary technicians.

## 9.0 Continuing Education for Veterinarians (24 Del.C. ~~§3344~~ §3309(b))

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two-year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

9.1.4 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.

### 9.2 Continuing Education Requirements for Reinstatement of Lapsed License

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 *Lapse of 12 to 24 months.* Twenty-four (24) hours of continuing education credits must be completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 *Lapse of over 24 months.* Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

### 9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 *Compendium on Continuing Education for the Practicing Veterinarian*; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more than 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

### **10.0 Voluntary Treatment Option**

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

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

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

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

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.

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

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

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

addition to the administrative costs associated with the Voluntary Treatment Option.

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

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

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

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

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

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

#### **11.0 Qualification for Licensure by Examination as a Veterinary Technician (24 Del.C. §3319)**

11.1 The applicant shall file the following documents:

11.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

11.1.2 Official transcript from an AVMA-accredited veterinary technician program or from a foreign veterinary program approved by the AVMA or from completion of acceptable educational and/or experiential alternatives. The following educational and/or experience qualifications shall be considered acceptable alternatives for the purpose of veterinary technician licensure for a period of seven years following the enactment of the Law §3319(a)(1) provided that the Board may shorten this period:

11.1.2.1 a baccalaureate degree in animal science-related field as approved by the Board and 2625 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.2.2 a degree from a veterinary technician program that is not accredited by the American Veterinary Medical Association, as approved by the Board, and 2625 hours of practical experience under the supervision of a licensed veterinarian.

11.1.2.3 a baccalaureate degree in biology, chemistry, psychology, physics, or similar scientific field of study as approved by the Board and 3500 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.2.4 completion of 60 credit hours of coursework at the postsecondary educational level, as approved by the Board, and 5250 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.2.5 or a period of 7000 hours of practical experience under the supervision of a licensed veterinarian(s).

11.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

11.1.4 Veterinary Technician National Examination (VTNE) or its successor.

11.1.5 Check or money order for the license fee. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

11.2 Proof of education shall consist of a transcript sent directly from school to the Board.

11.3 Proof of practical experience shall consist of a notarized letter of endorsement from the supervising veterinarian(s).

11.4 Only completed application forms will be accepted. In the case of incomplete application forms,

omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

11.5 Applications for any licensure submitted by final year veterinary technician students enrolled in an AVMA-accredited program for the purpose of taking the VTNE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

## **12.0 Character of Examination for Veterinary Technicians – Veterinary Technician National Examination (VTNE) (24 Del.C. §3306)**

12.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the Veterinary Technician National Examination (VTNE) or its successor.

12.1.1 The passing score for the VTNE or its successor shall be the score as recommended by the American Association of Veterinary State Boards or its successor.

## **13.0 Reciprocity for Veterinary Technicians (24 Del.C. §3320)**

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the application requirements set forth in 24 Del.C. §3320.

## **14.0 Continuing Education for Veterinary Technicians (24 Del. C. §3309(b))**

14.1 Any veterinary technician actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

14.1.1 Twelve (12) hours of approved certified continuing education credits must be completed for the immediate two-year period preceding each biennial license renewal date.

14.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

14.1.3 A veterinary technician may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

14.1.4 The Board has the power to waive any part of the entire continuing education requirement. Exemptions to the continuing education requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than 60 days prior to the biennial license renewal date.

### 14.2 Continuing Education Requirements for Reinstatement of Lapsed License

14.2.1 Any veterinary technician whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

14.2.1.1 Lapse of 12 to 24 months. Twelve (12) hours of continuing education credits must be completed. The 12 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

14.2.1.2 Lapse of over 24 months. Eighteen (18) hours of continuing education credits must be completed. The 18 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

### 14.3 Continuing Education Requirements for Reinstatement of Inactive License

14.3.1 Twelve (12) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 12 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

14.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

### 14.5 The following organizations are approved for formal continuing education activities.

14.5.1 AVMA.

14.5.2 AVMA accredited schools.

14.5.3 Federal/State/County Veterinary Associations & USDA.

14.5.4 The NAVTA Journal, NAVTA-approved online continuing education

14.5.5 Registry of Approved Continuing Education (RACE) courses.

14.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

14.6.1 University course work, subject to Board approval.

14.6.2 Veterinary technician program course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more than 2 1/2 years before the renewal date.

14.6.3 Government Agencies.

14.6.4 Other forms of CE as long as and the activity is approved by the Board.

14.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

### **15.0 Unprofessional Conduct for Veterinary Technicians (24 Del.C. §3316(a)(1))**

15.1 Unprofessional conduct as a veterinary technician shall include, but not be limited to, the following:

15.1.1 performing the acts forbidden under Section 1.3 of the Rules and Regulations.

15.1.2 performing the tasks in Section 1.6 of the Rules and Regulations without the specified supervision.

15.1.3 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 Del.C. §1325.

15.1.4 Misrepresenting continuing education hours to the Board.

15.1.5 Failure to obey a disciplinary order of the Board.

15.1.6 Use by a veterinary technician of any certificate, college degree, license, or title to which he or she is not entitled.

15.1.7 Placement of veterinary technical knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

### **4416.0 Crimes substantially related to the provision of Veterinary Medicine**

4416.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Veterinary Medicine in the State of Delaware without regard to the place of conviction:

4416.1.1 Reckless endangering in the first degree. 11 Del.C. §604

4416.1.2 Abuse of a pregnant female in the second degree. 11 Del.C. §605

4416.1.3 Abuse of a pregnant female in the first degree. 11 Del.C. §606

4416.1.4 Assault in the second degree. 11 Del.C. §612

4416.1.5 Assault in the first degree. 11 Del.C. §613

4416.1.6 Terroristic threatening. 11 Del.C. §621 Felony

4416.1.7 Unlawfully administering drugs. 11 Del.C. §625

4416.1.8 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626

4416.1.9 Murder by abuse or neglect in the second degree. 11 Del.C. §633

4416.1.10 Murder by abuse or neglect in the first degree. 11 Del.C. §634

4416.1.11 Murder in the second degree. 11 Del.C. §635

4416.1.12 Murder in the first degree. 11 Del.C. §636

4416.1.13 Incest. 11 Del.C. §766

4416.1.14 Unlawful sexual contact in the first degree. 11 Del.C. §769

4416.1.15 Rape in the fourth degree. 11 Del.C. §770

4416.1.16 Rape in the third degree. 11 Del.C. §771

4416.1.17 Rape in the second degree. 11 Del.C. §772

4416.1.18 Rape in the first degree. 11 Del.C. §773

4416.1.19 Sexual extortion. 11 Del.C. §776

4416.1.20 Bestiality. 11 Del.C. §777

4416.1.21 Continuous sexual abuse of a child. 11 Del.C. §778

- 4416.1.22 Dangerous crime against a child. 11 **Del.C.** §779
  - 4416.1.23 Female genital mutilation. 11 **Del.C.** §780
  - 4416.1.24 Unlawful imprisonment in the first degree. 11 **Del.C.** §782
  - 4416.1.25 Kidnapping in the second degree. 11 **Del.C.** §783
  - 4416.1.26 Kidnapping in the first degree. 11 **Del.C.** §783A
  - 4416.1.27 Dealing in children. 11 **Del.C.** §1100
  - 4416.1.28 Endangering the welfare of a child. 11 **Del.C.** §1102
  - 4416.1.29 Sexual exploitation of a child. 11 **Del.C.** §1108
  - 4416.1.30 Unlawfully dealing in child pornography. 11 **Del.C.** §1109
  - 4416.1.31 Possession of child pornography. 11 **Del.C.** §1111
  - 4416.1.32 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112
  - 4416.1.33 Sexual solicitation of a child. 11 **Del.C.** §1112A
  - 4416.1.34 Obstructing the control and suppression of rabies. 11 **Del.C.** §1248
  - 4416.1.35 Offenses against law-enforcement animals. 11 **Del.C.** §1250
  - 4416.1.36 Use of an animal to avoid capture. 11 **Del.C.** §1257A (Felony)
  - 4416.1.37 Hate crimes. 11 **Del.C.** §1304 (Felony)
  - 4416.1.38 Cruelty to animals. 11 **Del.C.** §1325
  - 4416.1.39 The unlawful trade in dog or cat by-products. 11 **Del.C.** §1325A
  - 4416.1.40 Animals; fighting and baiting prohibited. 11 **Del.C.** §1326
  - 4416.1.41 Maintaining a dangerous animal. 11 **Del.C.** §1327
  - 4416.1.42 Abusing a corpse. 11 **Del.C.** §1332
  - 4416.1.43 Promoting prostitution in the second degree. 11 **Del.C.** §1352
  - 4416.1.44 Promoting prostitution in the first degree. 11 **Del.C.** §1353
  - 4416.1.45 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457
- (Felony)
- 4416.1.46 Violations. 16 **Del.C.** §1136
  - 4416.1.47 Prohibited acts A; penalties. 16 **Del.C.** §4751
  - 4416.1.48 Prohibited acts B; penalties. 16 **Del.C.** §4752
  - 4416.1.49 Unlawful delivery of noncontrolled substance. 16 **Del.C.** §4752A
  - 4416.1.50 Prohibited acts C; penalties. 16 **Del.C.** §4753
  - 4416.1.51 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3, 4 methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A
  - 4416.1.52 Prohibited acts D; penalties. 16 **Del.C.** §4754
  - 4416.1.53 Possession and delivery of noncontrolled prescription drug. 16 **Del.C.** §4754A
  - 4416.1.54 Distribution to persons under 21 years of age; penalties. 16 **Del.C.** §4761
  - 4416.1.55 Purchase of drugs for minors; penalties. 16 **Del.C.** §4761A
  - 4416.1.56 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767
  - 4416.1.57 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship; penalties; defenses. 16 **Del.C.** §4768
  - 4416.1.58 Unauthorized Acts against a Service Guide or Seeing Eye Dog (class D felony). 7 **Del.C.** §1717

4416.2 Crimes substantially related to the practice of Veterinary Medicine shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**8 DE Reg. 1105 (2/1/05)**

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# PROPOSED REGULATIONS

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## DEPARTMENT OF TRANSPORTATION

### OFFICE OF MOTOR FUEL TAX ADMINISTRATION

Statutory Authority: 6 Delaware Code, Section 2912 (6 Del.C. §2912 et seq.)

#### PUBLIC NOTICE

#### 2401 Regulations for the Office of Retail Gasoline Sales

##### Background

Under Title 6 of the **Delaware Code**, Section 2912, certain entities that distribute Motor Fuels through Delaware retail service stations are required to provide pump assistance to motorists who cannot pump their own fuel. Section 2912(a) places this requirement on Retail Dealers that offer both Full-Service and Self-Service. Section 2912(b) places this requirement on stations that provide self-service, unless the location is operating on a remote control basis with only one employee, or someone able to provide refueling assistance is in the vehicle. Regulation 2401, Section 7.0 currently requires Full/Self Service Retail Stations to conspicuously post a sign describing the pump service requirements. There is not a similar sign requirement for affected Self-Service Retail Stations. The purpose of this proposed change is to place the sign-posting requirement on Self-Service retail stations as well.

##### Public Comment Period and Notice of Public Hearing

The Department will take written comments on the draft regulatory changes from September 15, 2006 through October 13, 2006. The Motor Fuel Tax Administration will hold a public hearing on the proposed rule change on October 16, 2006. Any requests for copies of the Office of Retail Gasoline Sales Law and Regulations, or any questions or comments regarding this document should be directed to:

Michael J. Harrell, Motor Fuel Tax Administrator  
Division of Motor Vehicles, Motor Fuel Tax Administration  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 744-2715 (telephone)  
(302) 739-6299 (fax)  
[Michael.harrell@state.de.us](mailto:Michael.harrell@state.de.us)

#### 2401 Regulations for the Office of Retail Gasoline Sales

##### **1.0 Definitions**

Definitions in 6 **Del.C.** §2901 are applicable to these regulations. The following words and phrases, when used in these regulations and for the purpose of the administration of 6 **Del.C.** Ch. 29, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

**"Act"** means 6 **Del.C.** Ch. 29, the Retail Sales of Motor Fuel Act.

**"Commissioned agent"** means a person, partnership, corporation or other entity which directly or indirectly receives from a manufacturer, and for participation in the operation of a station or any portion thereof, compensation determined by reference to the profits earned or revenues generated at the station.

**"Company personnel"** means one or more employees or agents of a manufacturer, or a subsidiary of a manufacturer.

**"Council"** means the Retail Gasoline Sales Advisory Council created pursuant to 6 **Del.C.** §2911(b).

**"Fee arrangement"** means any agreement whereby a person, partnership, corporation or other entity directly or indirectly receives, from a manufacturer, and for participation in the operation of a station or any portion thereof, compensation determined other than by reference to the profits earned or revenues generated at the station.

**"Motor vehicle fuel"** or **"motor fuel"** means gasoline, special fuel or both.

**"Office"** means the Office of Retail Gasoline Sales.

"Retail service station" or "service station" or "retail gasoline outlet" means the real property and improvements thereto from which motor fuel is sold at retail and delivered into the tanks of motor vehicles.

"Secretary" means the Secretary of Transportation.

"Subsidiary company" or "subsidiary" means a corporation 50% or more of the assets, capital stock or voting securities of which are owned by or pledged to, directly or through attribution, another corporation; or a corporation which as a practical matter is controlled by another corporation.

## **2.0 Price Signs on Fuel Pumps and Premises**

2.1 When the price indicated on the computing mechanism of a pump or other dispensing device offering motor fuel for sale is the per gallon price, that is the only price sign required to be displayed on said pump.

2.2 When the price indicated on the computing mechanism of a pump is the per liter price, another sign indicating the equivalent price per gallon to the nearest 1/10 cent must be prominently displayed on said pump with numerals no smaller than those which display the liter price. In addition to the unit price, the signs on the pump may indicate that state and federal taxes are included in the unit price. (All taxes must be included in the advertised price.)

2.3 The price indicated on the computing mechanism is the maximum price which may be charged per measured unit and the resulting total cost computed is the maximum remittance that can be demanded from the consumer for the fuel sold.

2.4 A cash discount may be offered which is less than the computed cost, but a surcharge for credit, or any other reason, may not be added to the computed cost for the fuel sold.

2.5 Separate pumps may be provided for cash and charge sales of the same brand, grade, type of fuel and service, providing that the pumps are adequately and prominently identified.

2.6 Price signs displayed on the station premises and not attached to a pump must indicate the grade of fuel, the type of service and the unit, if other than gallon. If there are special requirements to qualify for an advertised price, such as minimum quantities, cash, etc., those requirements must also be prominently included on said sign.

2.7 Fractions of a cent on the price advertised must be of the same general design and at least one-half the height and width of the numerals representing the whole cents.

## **3.0 Manufacturers**

3.1 License-Declaration of desire to sell in combined forms.

3.1.1 License-Declaration. All manufacturers of motor fuel and individuals desiring to sell motor fuels or special fuels through retail stations in Delaware shall procure a license for each establishment, operated as required by sections 5102 and/or 5134, Title 30, Delaware Code.

Form number MFT-6, Retail Gasoline License or Form number SF-1, Retail Special Fuel License, is required.

3.1.2 Amendment to License-Declaration. If any change (except changing suppliers) occurs causing the information contained in either form MFT-6 or SF-1 to become inaccurate, the holder of the uncanceled license shall within 30 days cancel said license and apply for a new license containing the proper information. If the business is sold, it is the holder of the then invalid license who must cancel said license with the Department of Transportation.

3.2 Access to information.

3.2.1 Books and Records. Whenever the Office has reason to believe that a manufacturer has engaged in, is engaging in, or is about to engage in any practice in violation of the Act or regulations, or in order to verify the accuracy of any information submitted to the Office, the Office may demand access to the books, records and data of the manufacturer. A manufacturer shall make such information available to the Office for inspection or copying during normal business hours unless otherwise agreed.

3.2.2 Samples. Any seller of fuels within the scope of this Act shall, upon the request of the Office, provide samples of any motor fuel or special fuel for chemical analysis or other inspection, and reimbursement shall be made for the samples taken.

3.2.3 Standard Specification for Fuels.

3.2.3.1 Any motor fuel sold at retail or intended to be sold at retail in the State of Delaware which does not meet or exceed ASTM specifications for that type fuel and which causes "fuel related performance problems" for the motoring public may be ordered corrected or removed from the marketplace.

3.2.3.2 Violation of Standards-Stop Sale. If a sample taken by the Office and tested by a qualified laboratory finds the sample to be substandard for any of the reasons established as standards or limitations written herein, the Office shall issue a Stop Sale for all or any portion of the seller's operation which is in violation until the violation has been corrected. The Office shall have the authority and duty to decide when the steps taken were

sufficient to correct the violation and inform the seller of when sales may resume.

3.2.3.3 Whenever the Office finds any person marketing petroleum products in violation of this Act or its Regulations and has issued a Stop Sale directing them to cease such violation and the violation continues, the Office shall refer the matter to the Attorney General and he shall take appropriate legal action.

#### **4.0 Independence of Retail Dealers**

4.1 Ban against company-operated service stations.

4.1.1 Notification of company-operated stations. Every manufacturer operating a station with company personnel, a subsidiary company, a commissioned agent or under a fee arrangement shall submit to the Office a written notification which, with regard to each station so operated, shall specify the address, describe the manner of operation and state the date that company operation began.

4.2 Temporary operation of a previously dealer-operated station by manufacturers of petroleum products.

4.2.1 Temporary operation. After July 29, 1974, a manufacturer of petroleum products may operate, for a period not to exceed 30 days, a previously dealer-operated station only if the dealer:

4.2.1.1 vacated the station in breach of his lease; or

4.2.1.2 takes an extended vacation or a temporary leave and there is a mutual agreement of operation; or

4.2.1.3 was terminated or not renewed as provided for by P.M.P.A., 15 U.S.C.A. §2801 and/or evicted by the manufacturer for cause, as provided for by said Act; or

4.2.1.4 the parties mutually agree to terminate the contract. The 30-day period shall commence on the day following the date of such death, abandonment, vacation, eviction or termination.

4.2.2 Applications for exceptions. Applications for exceptions to the time period specified in section A of this Regulation will be considered only if they are submitted to the Office in writing and specify as to each station for which such exception is requested:

4.2.2.1 the address;

4.2.2.2 the basis for the applicability of subsection A of this regulation;

4.2.2.3 the name and address of the previous dealer;

4.2.2.4 the reason why the exception is sought;

4.2.2.5 the duration of the exception sought;

4.2.2.6 a complete description of the actions being taken to locate a new dealer; and

4.2.2.7 an acknowledgement that all additional information demanded by the Office will be provided by the applicant within 20 business days of receipt of the demand.

4.2.3 Action on applications. Decisions on applicants made pursuant to subsection 2905.2 of this Regulation shall be written and sent by certified mail, return receipt requested, to the applicant at the return address appearing on the application.

4.2.4 Operation pending action. Operation of a previously dealer-operated station by a manufacturer in excess of the time period specified in section 2905.1 of this Regulation and during the pendency of an application made pursuant to subsection 2905.2 of this Regulation shall not be allowed unless the contrary has been authorized in writing by the Office.

4.2.5 Operation of a new station by a manufacturer. Upon the approval of the Office a manufacturer may open a new station and operate said station with company personnel. Any period of time that a manufacturer would be allowed to operate a new station shall be decided by the Office on the merits of each case.

4.2.6 Rebuilding or relocating a lawfully operated outlet by a manufacturer. Rebuilding: Producer/refiner locations may be rebuilt at the same location or in reasonable proximity thereto when the station is lost to fire or other disasters, or when facilities are being remodeled or renewed.

4.3 Formal hearing procedures.

4.3.1 Formal hearing. Any person, partnership, corporation or any other entity having had an Application for Exception under Regulation 2905.2 denied by the Office may demand a formal hearing with the Secretary or his designee within 30 days after receipt of that decision or, if applicable, the date on which the application is deemed to have been denied.

4.3.2 Requisites of demand. The demand for hearing shall be in writing and set forth the grounds upon which review of the denial is sought.

4.3.3 Notice; place of hearing. After receipt of a written demand for hearing, the office shall give reasonable notice to the petitioning party and the Attorney General of the date and time for the hearing. All hearings

shall be held at the Dover, Delaware address of the Office and shall be conducted by the Administrator of the Retail Gasoline Sales or his designee in accordance with 29 **Del.C.** Ch. 64, the Administrative Procedures Act.

4.3.4 Decision and appeal. The Hearing Officer shall render a written decision stating his findings of fact and conclusions of law. Copies of the decision shall be promptly mailed to all parties.

4.4 Effective date.

The provisions of 6 **Del.C.** §2905(a) shall apply only to service stations or retail outlets first operated or which began operation by company personnel, a subsidiary company or a commissioned agent after July 29, 1974.

## **5.0 Marketing Agreements**

5.1 Marketing Agreements.

5.1.1 Non-waivable provisions. Every marketing agreement entered into, or reviewed or continuing in effect after July 29, 1974 shall expressly set forth all of the non-waivable provisions enumerated in 6 **Del.C.** §2909.

5.1.2 Disclosure. Contracts which do not expressly set forth all of the non-waivable provisions enumerated in 6 **Del.C.** §2909 may be brought into compliance with subsection 2909.1.1 of this Regulation by the attachment to such contracts of a disclosure of all such non-waivable provisions. The disclosure must be dated and signed by all parties to the contract.

5.1.3 Upon the request of the Office, a manufacturer or retail dealer shall provide the Office with a copy of any specified marketing agreement, or a sample agreement.

## **6.0 Office of Retail Gasoline Sales: Rules and Regulations: Advisory Council: Injunction**

6.1 Violation of act or regulation.

6.1.1 Powers. Whenever the Office receives a complaint or any information from any source, which if true would amount to a violation of the Act or Regulations:

6.1.1.1 the Office may investigate the complaint or information;

6.1.1.2 the Office may, upon investigation of the complaint or information, make recommendations to the Attorney General's Office to investigate and enforce 6 **Del.C.** Ch. 29 by any remedy available.

6.1.2 Procedure. In the conduct of any hearing, the procedure will be governed generally by 29 **Del.C.** Ch. 64, the Administrative Procedures Act, unless any less formal procedure is agreed upon by the parties.

## **7.0 Self-Service Gasoline Stations: Attendants.**

7.1 Retail dealers of gasoline or motor fuel shall post a sign or signs provided to the retail dealer by the Office of Retail Gasoline Sales indicating that the service station will pump gasoline to qualified handicapped persons from the self-service pump.

7.2 The sign(s) shall be conspicuously posted so that any driver seeking refueling services will be able to see said sign(s) from each point of access to the pump island(s). Additional signs may be posted to direct handicapped motorists to the pump or pumps from which their gasoline will be dispensed.

7.3 Notification:

7.3.1 A notice of the provisions of 6 **Del.C.** §2912 and these rules and regulations shall be provided to all licensed motor fuel dealers and to any individual, company or firm who applies for a retail motor fuel dealers license resulting from the take-over of any existing station or new station.

7.3.2 Every person who renews or is issued a handicapped plate/placard shall have available to them an informational notice detailing the requirements of the above section of the **Delaware Code** and these rules and regulations.

7.4 This regulation regarding the posting of handicapped signs at subject retail motor fuel service stations shall take effect sixty (60) days after approval of said regulation by the Office of Retail Gasoline Sales.

**Symbol Key**

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed-stricken through]**~~ indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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**DEPARTMENT OF AGRICULTURE**  
**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code  
Section 4815(b)(3)c (3 **Del.C.** §10005; 29 **Del.C.** §4815(b)(3)c)  
3 **DE Admin. Code** 1001

**ORDER**

Pursuant to 3 **Del.C.** §10005, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendment to rule 15.14.1 of Commission Rules. Following notice and a public hearing on July 18, 2006, the Commission makes the following findings and conclusions:

**Summary of the Evidence**

1. The Commission posted public notice of the proposed amendments in the July 1, 2006, *Register of Regulations* and for two consecutive weeks in the *Delaware State News* and the *News Journal*. The Commission proposed to adopt amendment to rule 15.14.1 to permit the imposition of penalties if a horse does not report for testing.
2. The Commission received no written comments. The Commission held a public hearing on July 18, 2006 and received no public comments.

**Findings of Fact and Conclusions**

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules. No written comments were received by the Commission. No public comments were received by the Commission.
4. The Commission finds that the new rules as amended should be adopted as previously published in the *Register of Regulations*.

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The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on September 1, 2006.

**IT IS SO ORDERED** this 15th day of August, 2006.

Bernard J. Daney, Chair  
W. Duncan Patterson, Secretary/Commissioner  
Edward J. Stegemeier, Commissioner  
H. James Decker, Commissioner  
Debbie Killeen, Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 27 (10 DE Reg. 27). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register*, page 27, or contact the Thoroughbred Racing Commission for more information.

A complete set of the rules and regulations for the Thoroughbred Racing Commission are available at: <http://www.state.de.us/research/AdminCode/title3/1000/1001/index.shtml#TopOfPage>

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 505

### REGULATORY IMPLEMENTING ORDER

#### 505 High School Graduation Requirements and Diplomas

##### 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** 505 High School Graduation Requirements and Diplomas. The amendments reflect the recommendations from the report of the High School Graduation Requirements Committee. The Committee was formed under the auspices of the P-20 Council following an analysis of Delaware's graduation requirements by Achieve, Inc., a national educational nonprofit organization created by the nation's governors and business leaders. Achieve, Inc. has conducted research indicating that high school students across the country are not being adequately prepared for success in college and in the workforce.

The amendments include increasing the requirement of three (3) credits in mathematics to four (4) credits beginning with the graduating class of 2011 and requiring each student to have an Individualized Learning Plan (ILP). The Computer Literacy requirement will be removed from the high school requirements for the graduation class of 2011 and will become a component of the middle school curriculum. Beginning with the class of 2013 two (2) credits in a world language will be required for graduation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on June 21, 2006, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, the Delaware Developmental Disabilities Council, the Delaware Council on the Teaching of Foreign Languages, the International Council of Delaware, the Delaware Mathematics Coalition members, the Delaware State Education Association and the Metropolitan Wilmington Urban League.

The Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council expressed support for the Individualized Learning Plans but had concerns about other things such as:

The lack of involvement of persons representing students with disabilities on the study committee;

The Department's response is that the State Board chose to not include every specific interest group in order to keep the Committee at a reasonable size. However, midway through the committee process, the Council was invited to participate in a focus group on the issue of increased rigor for graduation. Copies of the focus group comments were shared with the committee and are attached to the final report.

The increased dropout rates for students with disabilities;

The Department's position is that research indicates that dropouts are not a reaction to increased rigor in curricula but due to a variety of other factors. It was in light of those findings that we are expanding the use of the ILPs and that other high school reform initiatives are being put in place across the State.

The difficulties that students with disabilities will have in completing two years of a world language and the lack of a definition of world language which should include American Sign Language;

The Department will be forming a committee to define World Language in the context of this regulation and the concerns will be included when the issue is discussed. The committee will certainly consider the inclusion of American Sign Language as part of the definition.

The Delaware Council on the Teaching of Foreign Language supported the world language requirements and offered to help with implementation issues as did the International Council of Delaware.

The Delaware Mathematics Coalition supported the increased rigor in math and offered its help with implementation issues.

The Delaware State Education Association and the Metropolitan Wilmington Urban League generally supported the increased requirements and rigor. They did express concern about the implementation with regards to resources for both funding and personnel. The Department and the State Board of Education also recognizes these concerns and they are committed to solving the issues surrounding funding and personnel.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas in order to increase the graduation requirement of three (3) credits in mathematics to four (4) credits beginning with the graduating class of 2011, to require each student to have an Individualized Learning Plan (ILP) and to remove the Computer Literacy requirement from the high school requirements for the graduation class of 2011. The Computer Literacy requirement will become a component of the middle school curriculum.

In addition, beginning with the class of 2013 the amendments require two (2) credits in a world language for graduation.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 505. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 505 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 505 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** 505 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 505 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 17, 2006. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 17th day of August 2006.

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**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 17<sup>th</sup> day of August 2006**State Board of Education**

Jean W. Allen, President  
Richard M. Farmer, Jr., Vice President  
Mary B. Graham, Esquire  
Gregory A. Hastings  
Barbara B. Rutt  
Dennis J. Savage  
Dr. Claiborne Smith

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 30 (10 DE Reg. 30). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register*, page 30, or contact the Department of Education for more information.

A complete set of the rules and regulations for the Department of Education are available at:  
<http://www.state.de.us/research/AdminCode/title14/>

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Diamond State Health Plan 1115 Demonstration Waiver

##### Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to submit a request to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 115 demonstration waiver, entitled "The Diamond State Health Plan" for the period January 1, 2007 through December 31, 2009. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation pursuant to 29 **Delaware Code** Section 10115 in the July 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed regulations.

##### Summary of Proposal

##### Statutory Authority

- Social Security Act §1115, *Demonstration Projects*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

##### Background

The Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health

coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to health care to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of health care expenditures for the Medicaid population.

The current demonstration project #11-W-0063/3 expires on December 31, 2006. To assure the continuation of the DSHP, the Division of Medicaid & Medical Assistance has submitted a three-year extension request for the DSHP 1115 Waiver to the CMS for the period January 1, 2007 through December 31, 2009.

### Summary of Proposal

DMMA is announcing a thirty-day comment period on the DSHP 1115 Waiver Extension request submitted to CMS.

The application to renew documents how the State has met its goals of improving access to services, expanding coverage to additional populations and substantially improving quality of care for eligible individuals enrolled in the Diamond State Health Plan (DSHP). The State intends no changes to the DSHP during the renewal period. The waiver application will be made available upon request.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### Summary of Comments Received with Agency Response and Explanation of Changes

The Disabilities Law Program (DLP), Community Legal Aid Society, Inc. offered the following observations and recommendations summarized below. The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) endorse the comments by the DLP regarding the renewal application for Delaware's Medicaid managed care program.

DMMA has considered each comment and responds as follows:

The DLP is the statewide protection and advocacy agency for persons with disabilities in Delaware. Medicaid is one of the primary areas of concentration for DLP's advocacy. We focus primarily on eligibility, access to services, and the promotion of consumer-friendly managed-care policies. The DLP has advised and represented numerous clients statewide on these important issues.

In light of increasing health care costs across the private and public sectors, the DLP appreciates that Delaware has continued to maintain its array of covered services and eligibility groups in its Medicaid program. The DLP supports Delaware's expansion of the Medicaid-eligible population to include all uninsured Delawareans at or below 100% of the federal poverty level through the Diamond State Health Plan waiver. The DLP also values the state's participation in managed care meetings open to the public convened by a group of Medicaid beneficiaries and parents. These meetings are regularly attended by representatives from the Division of Medicaid & Medical Assistance, the Health Benefits Manager, and Diamond State Partners and provide a forum to address issues and concerns expressed by Medicaid managed care beneficiaries.

The DLP offers the following comments in areas in which Medicaid managed care in Delaware may be able to be further improved:

1.) **Effective Communication for People with Disabilities**

The waiver renewal application describes the Health Benefits Manager's (HBM) "comprehensive, culturally sensitive, linguistically appropriate educational program...designed to assure that clients gain a complete understanding of managed care in general and the responsibilities of the client under this system." Without intending to detract from the important legal responsibility to provide access to this information to persons with limited English proficiency, the DLP encourages DHSS to include language referencing its contractors' legal responsibility to ensure effective communication with people with disabilities. See, Americans with Disabilities Act, 42 U.S.C. §§ 12132 – 12133, and implementing regulations regarding effective communication at 28 CFR §§ 35.130, 35.160; Section 504 of the Rehabilitation Act, 29 U.S.C. §794. For example, the use of the telephone system as the primary means of program enrollment may not be accessible for people who are deaf and without telephone/TTY access and written materials should be provided in alternative formats for people with visual impairments. Similarly, language be as clear and simple as possible for people with cognitive limitations.

In the DLP's experience, DHSS has reasonably accommodated people who are deaf by providing sign language interpreters at regularly scheduled appointments upon request, pursuant to DHSS

Administrative Notice A-01-2006 (Jan. 9, 2006). The DLP recommends that this Administrative Notice be shared with DHSS's HBM and managed care contractors, and language referencing this legal obligation be included in the waiver renewal application and/or expanded upon in the Request for Proposals to be submitted for FY 2007.

**Agency Response:** Your concerns are related to the ability for persons with disabilities, as well as language barriers, to have access to comprehensive, culturally sensitive, linguistically appropriate information. You cite references from the Americans with Disabilities Act. I will add that a new chapter to the 42 CFR, Chapter 438, was specifically drafted for guidance to Managed Care program for the Medicaid and Medicare populations. This Chapter also addresses many of your concerns. Diamond State Health Plan (DSHP) has incorporated this language into its contracts with its managed care organizations as well making this a requirement for Diamond State Partners. DMMA understands your concerns and support your recommendations. We will continue our efforts to expand this access in the future.

2.) EPSDT Outreach and Screening Services

DHSS's waiver renewal application does not mention the responsibility to provide outreach and information services under the Medicaid Early Periodic Screening Diagnostic and Treatment (EPSDT) benefit as one of the HBM's enrollment responsibilities. See, 42 U.S.C. §1396a(a)(43)(A). Congress has instructed states to take "aggressive action" to inform all Medicaid-eligible children from birth through age 21 and their families about the availability of EPSDT benefits. The waiver renewal application also does not identify the provision of EPSDT screenings as a managed care quality measure (although perinatal care services are so identified, see, DSHP Renewal Application at 36). The DLP recommends that the responsibility for EPSDT outreach services be clearly identified as appropriate in the waiver renewal application and/or upcoming Request for Proposals. The DLP also recommends that DHSS track the provision of the required EPSDT screens as one of its quality measures.

**Agency Response:** The Waiver Renewal does not specifically address EPSDT Services. However, the DSHP Contract with its vendors does address EPSDT in some length. In addition, the Quality Strategy, required in this renewal, also addresses these needs. The Quality Strategy is just being updated and completed. The main emphasis on all of the DSHP services for our clients must be in the primary contract between the State and its vendors. DHSP expects to release a new Request for Proposal (RFP) for Managed Care Organizations in the late summer. That RFP will include detailed references to all EPSDT requirements.

3. Managed Care Appeals Process

The waiver renewal application states that managed care "appeals processes include requirements compliant with Federal Regulations." The current managed care organization's contract with DHSS does include those requirements. However, the DLP has received complaints from several clients who have requested appeals with Delaware Physicians Care, Inc. but who have not been afforded the opportunity to present evidence in-person to the managed care organization in accordance with 42 CFR §438.406(b)(2). The DLP recommends that DHSS investigate and track the provision of in-person appeal hearings by its managed care contractors.

The waiver renewal application section on Diamond State Partners' (DSP) quality assurance initiatives refers to the DSP review of inpatient admissions within 10 days of a previous stay. DSHP Renewal Application at 51-52. That section states that "[i]f a decision is made to deny DSP payment for the readmission, the provider is notified and has opportunity for appeal." *Id.* at 52. When the decision to deny Medicaid services is made, adequate written notice and the opportunity for a fair hearing must be offered to the Medicaid beneficiary, not the provider. See, e.g., 42 CFR §§ 431.206, 431.210, 431.220. In the DLP's experience, notices at times are issued only to the provider and not directly to the Medicaid recipient. While DHSS and its contractors may wish to inform the prescriber about its decisions, the DLP recommends that DHSS ensure that adequate, timely written notice of all decisions to deny or terminate Medicaid services be provided directly to the Medicaid recipient.

**Agency Response:** Your recommendation to track and investigate the provision of in person appeals is a good one. You are also correct that while the appropriate language is in our contract, it may not be carried out to the degree we expect. DMMA will implement your recommendation as soon as possible but no later than January 1, 2007.

The issuance of denial letters to our hospital vendors upon review of claims which could be denied is done with the expectation that the hospital will not and should not bill the Medicaid client for any denials. This is true of almost all Medicaid services. As you are aware, Medicaid does not issue an Explanation of Benefits to its clients. This is because in almost all cases the Medicaid Client cannot or should not be billed. When a service is requested that has been denied, reduced or limited, the client is notified. In this case the client could appeal

the denial, reduction or limited.

4. Managed Care Benefits Package

The waiver renewal application explains that while most Medicaid services are included in the managed care benefits package, there are several categories of services for managed care enrollees that continue to be covered under the state's traditional Medicaid system. The composition of the benefits package raises several issues.

First, the DLP is aware of several instances in which division of services between managed care and fee-for-service has created a "catch-22" situation for Medicaid beneficiaries. For example, the DLP represented a client whose doctors would not discharge him from the hospital until the client's prescription for adequate private duty nursing hours was approved. Those hours fell into the "specialized services for children" that the state has reserved for payment by traditional Medicaid, and the state refused to approve the nursing hours as medically necessary. At the same time, the managed care organization decided that it would no longer provide inpatient hospitalization services because the client was medically ready for discharge, with the provision of adequate nursing hours for care at home. While this particular case was resolved, it demonstrates how the division of covered services into managed care and fee-for-service can create conflicts. Especially in the case of a child with serious disabilities, the denial of services necessary to maintain the child in the hospital or at home cannot be a result consistent with the aims and requirements of the Medicaid program. The DLP recommends that DHSS take steps to avoid future situations in which beneficiaries' claims for alternative services are denied by both entities by addressing this issue as appropriate in the waiver renewal application and/or the upcoming Request for Proposals.

Second, the issue as to whether medically necessary services should be provided by the Medicaid managed care organization or by a child's school district through an Individualized Education Program (IEP) continues to recur. While Medicaid is generally the payor of last resort, when a service is both medically and educationally necessary, Medicaid's obligation to provide the service precedes that of the school district. See, 20 U.S.C. § 1412(a)(12)(A)(i); 20 U.S.C. § 1412(a)(12)(B)(i); 42 U.S.C. § 1396b(c); 34 CFR § 300.142(a)(1); 34 CFR § 300.142(b)(1)(i). The DLP has represented several clients whose outpatient therapy services were terminated or denied by the managed care organization on the basis the child was receiving services through an IEP and paid for by the school district. The IEP services often are narrower in scope than outpatient therapy and should not be categorically viewed by the managed care organizations as duplicative services. Compare Individuals with Disabilities Education Act, 20 U.S.C. §1401(26) (requiring school districts to provide services only "as may be required to assist a child with a disability to benefit from special education") with Medicaid Act 42 U.S.C. § 1396d(a)(13) (requiring, for EPSDT beneficiaries pursuant to 42 U.S.C. § 1396d@5), state Medicaid programs to provide "any medical or remedial services...recommended by a physician...for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level"); see also *Bd. of Education of Hendrick Hudson Central School Dist. V. Rowley*, 453 U.S. 176, 199 (1982) (holding that a school district is not required to provide services to "maximize a student's potential"). Consistent with this legal authority, the DLP recommends that the Medicaid managed care contractors' responsibility to provide medically necessary services be clarified as appropriate in the waiver renewal application and/or the upcoming Request for Proposals.

Third, the waiver renewal application indicates that managed care behavioral health benefits are "limited to 20 units of outpatient services and 30 days of inpatient services per year". DSHP Renewal Application at Attachment H. While states are permitted to employ some utilization controls, absolute categorical numeric limits on medically necessary services are not allowable. See, 42 U.S.C. § 1396d@5 (state's obligation to provide all services necessary to correct or ameliorate physical and mental health conditions for Medicaid beneficiaries from birth through age 21). The DLP recommends that DHSS make clear to Medicaid beneficiaries that behavioral health services beyond these numerical limits will be covered where medically necessary through traditional Medicaid.

**Agency Response:** The State believes that the example of challenges with the Managed Care Benefit package used in your letter is the exception rather than the rule. As you note, this was resolved. I believe you will find that the majority of cases of this type are also resolved and always in the client's best interest. We agree that increase communication between the MCO and the States units that are not familiar with a managed care environment can be strengthened and we are working toward that goal.

The State's contract with its MCOs is clear about the MCO responsibilities as they relate to IFSPs and IEPs. We work closely with the MCO to avoid the issues you mentioned. However, we cannot be seen, by CMS, as duplicating services that should, and often are, provided by another State Agency, i.e. the School districts. Again, this is a challenge better dealt with in the State's contract with its MCOs and we will attempt to further

clarify this benefit in that venue.

The State does provide parity in the Behavioral Health benefit. DSHP and the Division for Substance Abuse and Mental Health (DSAMH) work closely with the MCOs to assure that services that are exhausted under the MCO benefit, or in cases where the patient is in need of more serious treatment than is available through its MCO, are continued under services offered by DSAMH. This issue is clearly addressed in the DSHP contract with its MCOs.

Thank you again for your response to our request for comments. We value our supporters in the community and look forward to working with you in the future. Please feel free to call us at any time with your concerns.

#### **Findings of Fact:**

The Department finds that the proposed regulation as set forth in the July 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation regarding the three-year extension of the Diamond State Health Plan 1115 Demonstration Waiver is adopted and shall be final effective September 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 8/14/06

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### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

#### **ORDER**

#### **20310 Long Term Care Medicaid**

##### **Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program. The proposal amends a rule in the Division of used to determine eligibility for medical assistance to close a potential loophole in excluded resources. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the May 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

##### **Summary of Proposed Change**

##### **Statutory Authority**

Social Security Administration Program Operations Manual System (POMS) - POMS Section SI 01130.300, *Life Insurance*

##### **Summary of Proposed Change**

DSSM 20310.7.2: The Deficit Reduction Act of 2005 attempts to close loopholes in the Long Term Care Medicaid Program. Currently, Term Life Insurance, regardless of the amount of the face value, is excluded as a resource for applicants applying for Long Term Care Medicaid. It is a potential pathway by which resources could be placed in order to shelter assets. This allows individuals to become eligible for Long Term Care sooner. DMMA proposes that the State of Delaware become the beneficiary in the first position on all Term Life Insurance policies over \$10,000.00 in face value. Should there be other burial resources, then there will be no \$10,000.00 allowance.

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**Summary of Comments Received with Agency Response and Explanation of Changes**

The State Council for Persons with Disabilities (SCPD) and Jerry A. Hyman, Attorney-at-Law offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows.

**SCPD**

Under, the current regulations, life insurance with no cash value are excluded as a countable resource. SCPD has the following observations.

First, the proposed regulation cites the attached SSA POM SI01130.300 as the statutory authority for the change. This POM (which is not a “statute”) provides no support for the change. Indeed, the PPOM recites that the face value of term life insurance with no cash surrender value is an excluded resource.

**Agency Response:** Term life insurance continues to be an excluded resource. POMS SI was cited to show where DMMA looks to for guidance and direction on this matter.

Second, the proposed regulation cites the Deficit Reduction Act of 2005 as support for the change. SCPD could locate no authorization for the change in the Act. See attached ARC/UCP summary of the Act and the entire Long-term Care section from the Act.

**Agency Response:** DMMA does not claim the Deficit Reduction Act (DRA) of 2005 gives authorization for the change. Rather, the intent of the DRA is to reduce costs to the Medicaid program and to encourage cost sharing with the Medicaid recipient.

Third, consistent with Federal law, the State cannot impose unauthorized restrictions on Medicaid. The Federal POM SI 01130.300 confirms long-established Federal policy of excluding term life insurance with no cash surrender value as a countable resource. Conceptually, the unauthorized demand that an applicant name the State as beneficiary of life insurance proceeds as a condition of qualifying for Federal benefits is a form of unwarranted extortion.

**Agency Response:** DMMA will continue to exclude Term Life Insurance policies for eligibility. DMMA is following the guidance of Section 6012 of the DRA where it allows for annuities or similar financial instruments to name the State as the beneficiary. DMMA maintains that the purpose of life insurance is to pay for one’s funeral costs. The agency believes that \$10,000.00 is a reasonable amount to cover the cost of a funeral. Any amount over and above will be left to the Medicaid recipient’s heirs.

Fourth, the proposed regulatory change violates State statutory law:

A. The Department’s authority to recover Medicaid LTC disbursements upon a beneficiary’s death is limited to the deceased’s “estate”. See Title 25 **Del.C.** §5003. The definition of “estate” is as described in Chapter 19 of Title 12. See Title 25 **Del.C.** §5001(g). Title 12 **Del.C.** §1901 excluded life insurance from the “estate” of a deceased. Therefore, the Department is precluded from seizing life insurance proceeds upon the death of a LTC beneficiary.

B. The Department’s authority to recover Medicaid LTC disbursements upon a beneficiary’s death is likewise subject to a statutory “undue hardship” exception. See Title 25 **Del.C.** §5005. The proposed regulation contains no “hardship” exception.

**Agency Response:** A. The State of Delaware will not be “seizing” the life insurance proceeds. The policy would name the State as beneficiary after the funeral costs of no more than \$10,000.00 were paid. B. The State of Delaware will consider undue hardship on a case-by-case basis. Clarifying language will be added to the final order regulation.

Fifth, forcing indigent applicants to sign over their meager (\$10,000) term life insurance policies to the State as a condition of Medicaid eligibility is subjectively repugnant. It is inconsistent with State public policy. See, e.g., Title 31 **Del.C.** §501, which contemplates that the Medicaid program be administered humanely with due regard to the preservation of family life in such a way and manner as to encourage self-respect. Begrudging an elderly applicant the option of leaving a modest amount of life insurance to sustain a surviving spouse could be perceived as mean spirited.

**Agency Response:** There are spousal impoverishment rules in place to prevent the impoverishment of the recipient’s spouse. The State of Delaware does not regard \$10,000.00 as a “meager” sum of money and there are no

rules in place to protect the inheritances of the heirs of Medicaid recipients.

Mr. Hyman's Letter

Death benefits from insurance policies which do not generate a cash value are not countable resources in determining the eligibility of a Medicaid applicant. The Division's own Manual, at Section 20300.3 (on Resource Ownership) makes this clear. Any proposed regulation which attempts to condition Medicaid eligibility on a requirement that the State be named as a life insurance beneficiary does not change the plain fact that life insurance which carries no cash value cannot be a countable resource.

What the proposed regulation purports to do is expand the State's authority to recover from the estate of the individual (that is, recover from property only payable after the death of the individual). However, this is clearly beyond the scope of the Division's rulemaking authority.

Estate Recovery is determined by Federal and State law. Federal law, at 42 U.S.C. Sec 1396p(b)(4), permits each state to, by law, determine the scope of the estate from which Medicaid recoveries may be made. Delaware has done so, at 25 **Del.C.** Section 5001(g), where 'estate' is defined for recovery purposes as the probate estate 'described' in Chapter 19 of Title 12 of the Delaware Code. Nowhere in that chapter are the proceeds of life insurance (with or without cash value) includible in the probate estate. In fact, 12 **Del.C.** Sec 1901(c) specifically excludes such insurance from the estate.

Furthermore, only the proper and legally defined portions of the estates of Medicaid recipients can be subject to Medicaid recovery. The Division's proposed language in this rulemaking makes no distinction between life insurance on the life of the Medicaid recipient and life insurance on the life of his or her spouse. Apparently, no-cash value life insurance on both spouses would be payable to the State under this proposal, an explanation of estate recovery far beyond what is permitted by any statute.

Therefore, the proposed language to be added by this rulemaking to Section 20310.7.2 of the Delaware Medicaid Manual is in clear violation of both State and Federal law, and would not be enforceable.

**Agency Response:** The State of Delaware agrees that death benefit insurance policies that do not generate a cash value (commonly known as term life insurance) are not countable resources in determining eligibility. No where in the revised rule DSSM 20310.7.2 does it suggest that they will be considered a countable resource.

The Department has the authority to make rules and regulations pursuant to 31 **Del.C.** §107 and §512; 16 **Del.C.** §122(3)(j); and 42 C.F.R. §901 *et seq.*

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the May 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual regarding financial eligibility determination for the Medicaid Long Term Care Program is adopted and shall be final effective September 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 8/14/06

**DMMA FINAL ORDER REGULATIONS #06-38  
REVISIONS:**

**20310 Resource Exclusions**

**20310.1 Place of Residence/Real Property**

An applicant/recipient's principal place of residence and any land that adjoins is excluded if certain conditions are met.

**20310.1.1 Intent to Return**

The principal place of residence may be excluded if the individual intends to return home after any length of time.

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Temporary Institutionalization - If the attending physician has certified that a recipient is likely to return to his own home within a definite period (not to exceed 2 months) up to \$75.00 per month may be protected for maintenance of the home.

**20310.1.2 Spouse and/or Dependent Relative**

If the applicant/recipient's home is used by a spouse and/or dependent relative during the individual's absence it may be excluded.

**20310.2 Jointly Owned Real Property**

Jointly owned real property may be excluded if the sale would cause undue hardship, due to loss of housing, to a co-owner.

**20310.3 Attempts to Sell**

Real property may be excluded when an individual has made reasonable but unsuccessful efforts to sell throughout a 9-month period of conditional benefits, as long as the individual continues to make reasonable efforts to sell it. (See DSSM 20360)

**20310.4 Indian Lands**

Any lands that are restricted allotted Indian lands are excluded.

**20310.5 Automobiles**

One automobile, regardless of value, if, for the individual or a member of the individual's household (member of a household is one who receives food, clothing and shelter at the applicant's residence at time of institutionalization) if it fits the exclusions listed in Sections 20310.5.1 -20310.5.4.

**20310.5.1 Employment**

The automobile is excluded if necessary for employment.

**20310.5.2 Medical Use**

If the automobile is necessary for the medical treatment of a specific or regular medical problem, it may be excluded.

**20310.5.3 Modifications**

An exclusion may be used if the vehicle is modified for operation by or transportation of a disabled person.

**20310.5.4 Essential Daily Activities**

The automobile may be excluded if it is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.

**20310.6 Joint Ownership**

If the automobile is jointly owned and if a co-owner refuses to sell it may be excluded.

**20310.7 Life Insurance**

**20310.7.1 Face Value**

Life insurance is excluded if the total face value of the policies is \$1500 or less and the individual has no revocable designated burial funds.

(See Section 20340.1.3 Relation to Burial Allowance for the relationship between life insurance and the burial allowance)

**20310.7.2 Death Benefits**

The face value of term or death benefit only policies that do not generate a cash surrender value and burial insurance policies are excluded for eligibility. Term, death benefit policies or burial insurance with a face value equal to or greater than \$10,000.00 must designate the State of Delaware as the beneficiary in the first position. The State will

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retain the amount no greater than the Medicaid expenditures. In situations where there are other burial funds available to cover the burial expenses, there will be no \$10,000.00 allowance. Naming the State of Delaware as the Beneficiary is a condition of eligibility. [Applicants/recipients may request a hardship consideration.]

**20310.8 Burial Exclusions****20310.8.1 Designated Burial Funds**

Burial funds in the amount of \$1500 that are separately identifiable and are clearly designated for burial expenses will be excluded.

**20310.8.2 Burial Spaces for Relatives**

A burial space or burial space item is excluded if held for the burial of the applicant/recipient, his/her spouse, or any other member of his/her immediate family. Immediate family includes parents, adoptive parents, minor or adult children (including adoptive and stepchildren) siblings (including adoptive and step) and the spouses of these relatives. If the relative's relationship to the recipient is by marriage only, the marriage must be in effect in order for the burial space exclusion to continue to apply. For example, a burial space held for a sister-in-law is no longer excludable if she and the recipient's brother divorce.

**20310.8.3 Burial Space Items**

A burial plot, gravesite, crypt, mausoleum, urn, niche, or other repository customarily and traditionally used for the deceased's bodily remains, vaults, headstones, markers, or plaques if pre-paid are excluded.

**20310.8.4 Burial Site Services**

The opening and closing of the gravesite and the care and maintenance of the gravesite if prepaid are excluded.

**20310.8.5 Prepaid Burial Contract**

A prepaid burial contract (sometimes funded by a life insurance policy) that cannot be revoked and cannot be sold without significant hardship is excluded.

**20310.9 Retroactive Social Security Administration Lump Sum**

The unspent portion of retroactive SSI and Title II Retirement, Survivors, and Disability insurance (RSDI) benefits is excluded from resources for the six calendar months following the month of receipt.

**20310.10 Reparations**

German Reparation payments must not be considered available in the eligibility or post eligibility treatment of income and resources. They can no longer be applied toward the personal needs allowance, community spouse income allowance, family member allowance nor cost of care. If German reparations payments are retained beyond the month of receipt, they must be considered exempt resources whether received while the person was in the community or after becoming institutionalized. These funds should be kept separate from other income and resources. Interest earned on these resources must be considered available income.

**9 DE Reg. 239 (8/1/05)**

**20310.11 Disaster Assistance Funds**

Any unspent Federal disaster assistance funds are excluded for 9 to 18 months.

**20310.12 Agent Orange Payments**

Any unspent Agent Orange settlement payments are excluded.

**20310.13 Victims Compensation Payments**

Victims compensation payments from a State established fund are excluded from resources for a period of 9 months after the month of receipt.

**20310.14 Radiation Exposure Compensation**

Any unspent Radiation Exposure Compensation Trust Fund Payments are excluded.

**20310.15 Unspent Cash for Medical or Social Services**

The unspent cash paid to an individual to help the individual pay for a medical or social service is not a resource for 1 full calendar month following the month of receipt.

**20310.16 Netherlands' Act for Victims of Persecution**

Any unspent payments from the Netherlands' Act on Benefits for Victims of Persecution 1940-1945 (WUV) are excluded.

**20310.17 Earned Income Tax Credit**

EITC (Earned Income Tax Credit) payments are excluded from resources in the month following the month of receipt.

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**ORDER****DSSM 20350.10 Exceptions to the Transfer of Assets****Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for the Medicaid Long Term Care Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Change****Statutory Authority**

- Omnibus Budget Reconciliation Act of 1993 (OBRA 93), Subchapter B, Part II, Section 13611, *Transfer of Assets; Treatment of Certain Trusts*
- 42 U.S.C. 1396p(d) and Section 1917(d) of the Social Security Act, *Liens, adjustments and recoveries; transfer of assets*

**Background**

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) allows nonprofit organizations to establish and manage a pooled trust for the benefit of people who are disabled according to SSI criteria. A pooled trust is a trust, which meets the criteria set forth in Section 1917(d)(4)(c) of the Social Security Act. It contains the assets of disabled persons and is managed by a nonprofit organization that maintains separate accounts for each such individual. The principal and interest of a pooled trust account are not counted in determining Medicaid eligibility, and transfer of assets into such accounts are not penalized, unless they are made after the disabled individuals becomes 65 years of age.

**Summary of Proposed Change**

The purpose of this regulation is to correct who is responsible for providing proof of disability.

Currently, the rule at DSSM 20350.10.2 directs the reader to DSSM 20102 for a separate disability

determination should the individual not be in receipt of SSI or disability benefits. *DSSM 20102 states, "The first of two steps in the application process is to determine medical eligibility. This is usually determined by Pre-Admission Screening (PAS). Referrals to PAS may come from the family of the applicant as well as other sources."*

Pre-Admission Screening does not determine disability according to the SSI standards. Therefore, DMMA is correcting the rule language regarding the proof of disability requirement to reflect current practices and long-standing procedures. The individual who is claiming disability must submit acceptable medical evidence.

### **Summary of Comments Received with Agency Response and Explanation of Changes**

The State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

As background, federal Medicaid law (OBRA '93) provides an exclusion from general transfer of assets limitations if a qualifying person places assets in a qualifying pooled trust operated by a non-profit organization. In order to qualify, an organization must meet SSI medical disability standards. Unfortunately, the current DMMA regulation contains an incorrect reference to the medical disability standard. Therefore, DMMA is substituting a more accurate standard, i.e., referring to the State agency (DDS) which conducts medical disability assessments for the Social Security Administration. The SCPD has the following recommendation.

Although the reference to "disabled according to the standards used by The Disability Determinations Services" may be accurate, it would be preferable to refer to "...evidence, he meets medical disability standards of the SSI (Title XVI) program." DDS does not adopt and publish its own standards. It uses the federal standards which are published on the SSA's Website. Therefore, it would be preferable to substitute the latter provision.

**Agency Response:** We agree. The final order regulation reflects the latter provision.

### **Findings of Fact:**

The Department finds that the proposed changes as set forth in the July 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual related to proof of disability used in determining eligibility for the Medicaid Long Term Care Program is adopted and shall be final effective September 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 8/14/06

### **DMMA FINAL ORDER REGULATION #06-37**

#### **REVISION:**

#### **20350.10 Exceptions to the Transfer of Assets**

##### **20350.10.1 Exceptions to Transfer of Residence**

The transfer provision does not apply to the HOME and title to the home transferred to:

- a. a spouse (as long as spouse does not then transfer property for less than fair market value);
- b. a child under 21 years of age;
- c. a child who is blind or disabled, as defined by the SSI program;
- d. a sibling who has an equity interest in the home and who has resided in the home for at least one year immediately before the date the individual becomes institutionalized; or
- e. a son or daughter of the individual (other than a child described above) who was residing in the home for at least 2 years immediately before the date the individual became institutionalized, and who provided care to that individual which permitted the individual to reside at home rather than in an institution.

In items d. and e. above the property cannot be excluded unless and until the assets are actually transferred. Also verification for this would consist of a written statement from the parent indicating that this situation existed. If the parent is not capable, a statement from an adult child or sibling and statements from two other adults indicating that the situation existed would suffice. Statements must specify the number of years spent in the home and the exact nature of the care provided.

**20350.10.2 Exceptions to Transfer of an Asset**

The transfer provision does not apply to ANY asset transferred:

- a. to the individual's spouse, or to another for the sole benefit of the individual's spouse;
- b. from the individual's spouse to another for the sole benefit of the individual's spouse (OBRA 93);
- c. to the individual's blind or totally and permanently disabled child;
- d. to a trust containing the assets of an individual under age 65 who is disabled as defined by the SSI program and which is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual or a court if the trust contains a provision that upon the death of the individual the State will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the individual (OBRA 93);
- e. to a pooled trust containing the assets of an individual who is disabled as defined by the SSI program and that is established and managed by a non-profit association if the trust contains a provision that upon the death of the individual the State will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the individual (OBRA 93).

A transfer of assets or an establishment of a trust is considered to be for the sole benefit of a spouse, disabled child, or individual under age 65, if the transfer is arranged in such a way that no individual except the spouse, child or individual can benefit from the assets in any way, either at the time of the transfer, or at any time in the future. If a beneficiary is named to receive the asset at the time of the individual's death, the transfer or trust will nevertheless be considered to have been made for the sole benefit of the individual if Medicaid is named as the primary beneficiary of the asset, up to the amount paid for services provided to the individual.

To determine whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual, obtain a legally binding, written document (such as a trust document). The document must clearly define the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the spouse, child, or disabled individual, since there is no way to establish, without a document, that only the individual will benefit from the transfer.

Where it is alleged that an asset was transferred to or for the benefit of an individual who is blind or totally and permanently disabled, a determination must be made that the individual in fact meets the definition of blindness or disability used by the SSI program. If the individual is receiving either SSI or Title II benefits, accept the disability determination made for those programs. If the individual is not receiving those benefits, a separate disability determination must be made[.] ~~using the procedures described in Section 20102—Medical Eligibility Determination.~~ The individual who is claiming the disability must submit acceptable medical evidence he has been determined disabled according to the standards used by [The Disability Determination Services The SSI program (Title XVI)]. The individual will be given a reasonable amount of time to provide the medical evidence.

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER**

**9085 Reporting Changes**

**Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code Section** 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the July 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2006 at which time the Department would receive

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information, factual evidence and public comment to the said proposed changes to the regulations.

## Summary of Proposed Change

### Statutory Authority

- 7 CFR 273.12, *Requirements for Change Reporting Households*

### Summary of Proposed Change

DSSM 9085, *Reporting Changes*: DSS is streamlining the reporting time frame for *change reporters* to the same reporting time frame as simplified reporting households. This change will result in less confusing client notices and allow the elderly and/or disabled households a longer period of time to report a change; resulting in fewer errors and overpayments caused by clients not reporting changes in a timely manner.

## Summary of Comments Received with Agency Response

The State Council for Persons with Disabilities (SCPD) offered the following comment and DSS responds as follows:

SCPD endorses the proposed regulation since they should improve program administration by providing uniform reporting time periods.

There are currently different timetables to report changes in financial circumstances applicable to different types of household and beneficiaries. The amendment will create a uniform time period to report changes. Instead of a reporting deadline of 10 days after initial knowledge of the change, the household may report the change by the 10<sup>th</sup> day of the month following the month of the change.

**Agency Response:** DSS appreciates the endorsement.

## Findings of Fact:

The Department finds that the proposed changes as set forth in the July 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to reporting changes in the Food Stamp Program is adopted and shall be final effective September 10, 2006.

Vincent P. Meconi, Secretary, DHSS, 8/14/06

## DSS FINAL ORDER REGULATION #06-35 REVISIONS:

### 9085 Reporting Changes

[273.12]

Certified food stamp households are required to report the following changes in circumstances:  
Simplified Reporting Requirements

The following reporting requirements are for all households except those households where all members are elderly or disabled and without earned income:

- Households are required to only report income changes when the monthly income exceeds 130 percent of the poverty income guideline for the household size that existed at the time of the certification or recertification.
- When a household's monthly income exceeds the 130 percent of the poverty income guideline, the household is required to report that change within ten days after the end of the month that the household determines the income is over the 130 percent amount.
- Households will not have to report any changes in the household composition, residence and resulting changes in shelter costs, acquisition of non-excluded licensed vehicles, when liquid

resources exceed \$2000.00 and changes in the legal child support obligation.

Additional reporting requirement for ABAWD individuals:

- Adults living in a home without any minor children, who are getting food stamps because they are working over 20 hours a week, must report when they start working less than 20 hours a week.

Change Reporting Requirements: (for households not eligible for the simplified reporting requirements above)

Change reporting households must report the following changes in circumstances by the 10<sup>th</sup> day of the month following the month of the change:

- Changes in the amount of gross unearned income of more than \$50, except changes in the public assistance grants. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment causes a change in income.
- All changes in household size, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 (for non-categorically eligible households);
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000 (for non-categorically eligible households);
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

~~Certified households must report changes within ten (10) days of the date the change becomes known to the household.~~

~~For reportable changes of income, households must report the change within 10 days of the date the household receives its first payment.~~

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

## 9085.1 Report Form

[273.12(b)]

Provide each household applying for benefits or being recertified for benefits with Form 130 with which to report changes listed above within 10 days. Provide a postpaid return envelope.

Send a new form to the household whenever a change is reported via a form.

## 9085.2 DSS Responsibilities: Action on Changes

[273.12(c)]

Take prompt action on all changes to determine if the changes affect the household's eligibility or allotment. Even if there is no change in the allotment, document reported changes in the case file, provide another change report form to the household, and notify the household of the effect of the change, if any, on its benefits. Document the date of receipt of the report form or the date a change is reported by phone or in person. If a household reports a change in income which is expected to continue for at least one month beyond the month in which the change is reported, act on the change according to DSSM 9085.3 and 9085.4. If DSS fails to take action on a change within the time limits specified in DSSM 9085.3, restore the lost benefits.

PA households have the same reporting requirements as any other food stamp household and shall use the change report form. PA households who report changes to their workers for PA purposes will be considered to have

reported the change for food stamp purposes as well.

### **9085.3 Processing Changes Which Increase Benefits**

[273.12(c)(1)]

For changes which result in an increase in a household's benefits, make the change effective no later than the first allotment issued ten (10) days after the date the change is reported to the Division.

For changes which produce an increase in benefits as the result of the addition of a new household member who is not a member of another certified household or as the result of a decrease of \$50 or more in the household's gross monthly income, make the change effective not later than the first allotment issued ten (10) days after the date the change is reported. These changes must take effect no later than the month following in which the change is reported.

For example, a \$30 decrease in income reported on the 15th day of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

If the change is reported after the 20th of a month and it is too late for the Division to adjust the following monthly allotment, issue a supplement by the 10th day of the following month or, if possible, in the household's normal issuance cycle in that month. For example, a household reporting a \$100 decrease in income at any time during the month of May would have its June allotment increased. If the household reported the change after the 20th of May and it is too late to adjust the benefit normally issued on June 1, issue a supplement for the amount of the increase by June 10.

Verify changes which result in an increase in a household's benefit in accordance with the verification requirements in DSSM 9038, prior to taking action on these changes except in the case of newborn infants. When a household reports the birth of a newborn, add the newborn to the household when the baby comes home according to DSSM 2006. Allow the household ten (10) days from the date the change is reported to provide verification required by DSSM 9038. If the household provides verification within this period, take action on the changes within the time frames specified above. The time frames will run from the date the change was reported, not from the date of verification. If, however, the household fails to provide the required verification within ten (10) days after the change is reported but does provide the verification at a later date, then the time frames specified in the first and second paragraphs of this section for taking action on changes will run from the date the verification is provided rather than from the date the change is reported.

In cases where DSS has determined that a household has refused to cooperate as defined in DSSM 9029, the household's eligibility will be terminated following the notice of adverse action.

### **9085.4 Decreases in Benefits**

[273.12(c)(2)]

If the household's benefit level decreases or the household becomes ineligible as a result of the change, issue a notice of adverse action (see DSSM 9006) within ten (10) days of the date the change was reported unless one of the exemptions to the notice of adverse action in DSSM 9006.3 applies. When a notice of adverse action is used, make the decrease in the benefit level effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested.

When a notice of adverse action is not used due to one of the exemptions in DSSM 9006.3, make the decrease effective no later than the month following the change. Verification which is required by DSSM 9032 must be obtained prior to recertification.

#### **Unclear Information**

When information about changes in a household's circumstances are unclear and DSS cannot determine the effect on the household's benefit, DSS must clarify and verify the changes as follows:

DSS must issue a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances.

Allow the household at least ten (10) days to respond and to clarify its circumstances either by telephone or by correspondence, as directed by DSS.

If the household fails to respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, DSS will terminate the case and issue a notice of adverse action explaining the reason for the

action. Inform the household that a new application must be filed if the household wishes to continue to receive benefits.

When the household responds to the RFC and provides sufficient information, process the changes according to DSSM 9085.3 and DSSM 9085.4.

### **9085.6 Failure to Report**

[273.12(d)]

If a household fails to report a change as required under DSSM 9085 and, as a result, receives benefits to which it is not entitled, file a claim against the household in accordance with DSSM 7000. If the discovery is made within the certification period, the household is entitled to a notice of adverse action in advance if the household's benefits are reduced. A household is not to be held liable for a claim because of a change in household circumstances which it is not required to report. Do not terminate individuals for failure to report a change unless the individual is disqualified in accordance with the disqualification procedures specified in DSSM 2023.

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## **DIVISION OF SOCIAL SERVICES**

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

### **ORDER**

#### **Child Care Subsidy Program**

#### **NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the December 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **SUMMARY OF PROVISIONS**

##### **Statutory Basis**

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41).

##### **Summary of Provisions**

DSS is proposing to amend several sections in the Division of Social Services Manual (DSSM) to clarify and update existing Child Care Subsidy Program policy. This includes updating, revising, clarifying, (and deleting where necessary) the following policy sections due, in part, to the integration of the previous Child Care Management system into the current DCIS II Child Care eligibility system:

1) DSSM 11003.6, Income Limits; DSSM 11003.7, Income Eligible Child Care; DSSM 11004.7.1, Child Care Fee Scale and Determination of Fee; and, DSSM 11006.4, Provider Reimbursement. Additionally, DSSM 11006.4.6, Reimbursement is combined with DSSM 11006.4.

2) Further clarifications were made in DSSM 11002.9, Definitions and Explanation of Terms; DSSM 11003.9.1, Income; and, DSSM 11003.9.2., Whose Income to Count. Sections 11002.9 and 11003.9.1 redefine

employment/wages to include the standard as minimum wage or an equivalent. DSSM 11004.4.2 is a new section added to update and explain the Purchase of Care Plus (POC+) program. This change reflects the agency's desire to offer POC+ to all clients who wish to participate in POC+.

These changes provide consistency with DSS programs and underscore the Division's mission of self-sufficiency.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Community Legal Aid Society, Inc. offered the following comments summarized below.

1) The Community Legal Aid Society, Inc. objects to the Purchase of Care changes proposed to DSSM §§11002.9 and 11003.9.3, and any other provisions that includes or supports as income the earnings of a nonparent adult cohabitating with a parent applicant for the purpose of determining the parent fee for a child they do not share, although both adults have a different child in common. The proposed change is inconsistent with Delaware law because it imputes a financial obligation to support a child on a person who is not otherwise obligated to provide any support.

The Delaware Parentage Act (DPA) imposes duties and obligations generally upon natural and adoptive parents; and, by case law, anyone outside of the parent-child relationship bears no responsibility for the child's support, unless the doctrines of adoption by estoppel or equitable estoppel apply. These doctrines generally apply where the nonparent has, at least at some point, assumed responsibility for the child or otherwise held out to the world that he or she is the mother or father, without going through formal adoption proceedings. Neither of these doctrines holds that by his or her cohabitation, the nonparent is conclusively representing himself as a parent.

The proposed policy counts income towards the support of a child that the nonparent is not obligated by Delaware law to provide. The result is unfair to both the parent and child. If a parent fee is based upon income he or she does not receive, how is the parent supposed to find the money to pay? There are no grounds to seek any funds for support from the noncustodial parent. This result leaves a parent without sufficient funds to pay the fee and could easily become the loss of child care and the job.

**Agency Response:** The Delaware Division of Social Services (DSS) appreciates the comments from Community Legal Aid Society, Inc. and has given them considerable thought. DSS disagrees that the policy imputes a financial obligation to support a child on a person who is not otherwise obligated to provide any support. The agency is not attempting to define parentage or parent-child relationship. Neither is it our intent to define who has responsibility to support a particular child. The intent is to clarify the definition of family size as it relates to the Child Care Subsidy Program.

The primary principle that governs the concept of family size is that parents and their children living together will be grouped together for eligibility purposes.

The Administration for Children and Families requires states to maintain consistency in family size and composition when calculating eligibility and the parent fee. The same individuals that comprise family size for eligibility must be the same for parent fee calculations. The agency determines the parent fee for each child. We do not stipulate the source of income from which the fee is paid.

As the family size increases the income limit also increases. This increases the number of families eligible for the Child Care Subsidy program.

If a family with unmarried partners and a child in common applies for the Child Care Subsidy program and is not eligible due to combined income, DSS breaks this family size down by parental relationship to try to determine as many individuals eligible as possible.

The parent fee is determined based on the family size and income as it relates to the federal poverty level. This determines the percentage of the cost for child care for which the applicant is responsible.

Guidance and analysis from the Attorney General's office states that the definition of "family" for purposes of the Child Care Development Fund does not depend upon the existence of a support obligation under state law. In fact, state law at 10 **Del. C.** §901 supports the proposed regulation defining family size.

2) We are also concerned with the family size definition and how it would fail to be fair if the proposed changes regarding the inclusion of nonparent income are counted. The definition only includes dependents living in the home, and fails to recognize other children for which a noncustodial parent may have primary financial

responsibility. These children may not be shared with the parent applicant, but belong to the nonparent.

**Agency Response:** There has been no change in the definition of family size. The changes made to policy sections 11002.9 and 11003.9.3(R) Family Size are clarifications to existing policy. This is not a new policy or procedure.

No change to the proposed amendment will be made because of these comments.

#### **FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the December 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program is adopted and shall be final effective September 10, 2006.

Vincent P. Meconi, Secretary, DHSS

\* Please note that no changes were made to the regulation as originally proposed and published in the December 2005 issue of the *Register* at page 931 (9 DE Reg. 931). Therefore, the final regulation is not being republished. Please refer to the December 2005 issue of the *Register*, page 931, or contact the Division of Social Services for more information.

A complete set of the rules and regulations for the Division of Social Services are available at:  
<http://www.state.de.us/research/AdminCode/title16/5000/5100/Table%20of%20Contents.shtml#TopOfPage>

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## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 311 & 1718 (18 Del.C. §§311, 2501)  
18 DE Admin. Code 610

### **ORDER**

#### **610 Automobile Premium Consumer Comparison**

After publication of proposed Regulation 610 in the *Delaware Register of Regulations* on July 1, 2006, the public comment period on the proposed regulation remained open until August 2, 2006. Public notice of the hearings and publication of proposed Regulation 610 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Written comments were received into the record from one individual, one trade association and five individual insurance companies that write automobile insurance in the State of Delaware.

#### **Summary of the Evidence and Information Submitted**

The proposed regulation was promulgated to provide a method whereby Delaware automobile insurance consumers would have the ability to compare premium rates of all insurers in Delaware. Each insurer would be required to submit information about its rates in response to a survey established by the Department. Insurers with less than one percent of the market would be required to fill out a less comprehensive survey. The insurers would be required to maintain records of all estimates provided to consumers and would also be required to provide a direct email response to the consumer confirming receipt of the quote request. All rate data for the website comparison would have to be filed with the Department annually on October 1<sup>st</sup> of each year.

The insurers were generally supportive of public accessibility to such rate comparison data. By and large they were concerned about the amount of detail required by the regulation, the difficulties in providing email receipts and the potential for misunderstandings and unintended reliance by the consumers on the sample rates based on hypothetical situations that did not take into account the specific risks and background information that is already available by direct contact with the consumer. All of the insurers acknowledged that they currently provide direct to

consumer rate quotes by telephone or website utilities. The purpose of the regulation would be to allow the consumer to look at rates from several companies on one website rather than or prior to accessing individual company websites or making individual calls to particular insurance companies.

#### **Findings of Fact**

Members of the public generally and the insurance consumer in particular have a vested interest in having that information available that will allow the consumer to make an informed and knowledgeable decision about insurance coverage. This regulation allows the consumer to utilize an objective information base that is not sponsored by any insurer or insurance agent. It will be designed with sufficient notice to the consumer that the comparative data is based on sample or hypothetical situations and that the information is not a rate quote or binding upon the particular insurer that submitted the information. Nevertheless, each insurer will be required to provide accurate data as part of their obligations under the regulation. The fact that the data has to be submitted on an annual basis avoids the problems inherent in using stale information. While suggesting different approaches, the insurers were supportive of the public's right to know the premium costs for consumer automobile insurance. There is no basis to amend or revise the substantive provisions of the proposed regulation based on the comments received.

#### **Decision and Order**

Based on the provisions of 18 **Del.C.** §§311 and 2501 *et seq.* and the record in this docket, I hereby adopt Regulation 610 to be effective on September 11, 2006.

#### **Text and Citation**

The text of the proposed amendments to Regulation 610 last appeared in the *Register of Regulations* Vol. 10, Issue 1, pages 62-63, July 1, 2006.

**IT IS SO ORDERED** this 11<sup>th</sup> day of August, 2006.

Matthew Denn, Insurance Commissioner

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 62 (10 DE Reg. 62). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register*, page 62, or contact the Department of Insurance for more information.

A complete set of the rules and regulations for the Department of Insurance are available at:  
<http://www.state.de.us/research/AdminCode/title18/index.shtml#TopOfPage>

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### **DEPARTMENT OF STATE**

#### **DIVISION OF PROFESSIONAL REGULATION**

3600 Board of Registration of Geologists

Statutory Authority: 24 Delaware Code, Section 3606 (24 **Del.C.** §3606)

24 **DE Admin. Code** 3600

#### **ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 4, 2005 at a scheduled meeting of the Delaware Board of Geologists to receive comments regarding proposed amendments to Rule 5.0 *Issuance and Renewal of License* and Rule 6.0 *Continuing Education* of its rules and regulations.

The proposed amendments enable licensees to renew their licenses online and attest that they have

completed the required continuing education. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 10, Issue 1, on July 1, 2006.

### **Summary of the Evidence and Information Submitted**

No written comments were received. No members of the public attended the hearing.

### **Findings of Fact and Conclusions**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board Rule 5.0 *Issuance and Renewal of License* and Rule 6.0 *Continuing Education*. The Board received no written or verbal comments on the proposed amendments.

2. The Board finds that the proposed amendments to the rules and regulations are necessary to allow for online renewal and to clarify the process for verification of completion of continuing education consistent with online renewal.

3. Pursuant to 24 **Del.C.** §3606 the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. The amendments to Rule 5.0 *Issuance and Renewal of License* and Rule 6.0 *Continuing Education* clarify the provisions of 24 **Del.C.** §3611 with regard to renewal of licensure.

### **Decision and Effective Date**

The Board hereby adopts the changes to Rule 5.0 *Issuance and Renewal of License* and Rule 6.0 *Continuing Education* to be effective 10 days following publication of this order in the *Register of Regulations*.

### **Text and Citation**

The text of the revised rules remains as published in *Register of Regulations*, Vol. 10, Issue 1, July 1, 2006, as attached hereto as Exhibit A.

**SO ORDERED** this 4th day of August, 2006.

#### **STATE BOARD OF GEOLOGISTS**

William S. Schenck, President, Professional Member

Stephen Williams, Professional Member

Kimberly McKenna, Professional Member

Dana Long, Public Member

### **3600 Board of Registration of Geologists Regulations**

#### **1.0 Definitions**

**Board** shall mean the State Board of Geologists established in 24 **Del.C.**, Ch. 36, §3603.

**Continuing Education Unit** shall mean one contact hour (60 minutes), subject to the Board's review.

**Five Years of Experience** shall mean:

Experience acquired in geological work as described in the 24 **Del.C.**, Ch. 36, §3602 (5) and (6) and after completion of academic requirements as stated in §3608(a)(1). The Board may discount experience obtained more than ten (10) years prior to the submission of an application. Part-time experience will be granted proportional to full-time credit. Three of the five years of experience must be in a position of responsible charge as defined below.

Experience references must be provided by a person knowledgeable and having a background of geological work.

The Board will only consider years of experience documented by references.

**Geologist** shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

**Practice of Geology** shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, buildings, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds himself or herself out able to perform or who does perform geologic services or work.

**Responsible Charge** shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

## **2.0 Code of Ethics**

### **2.1 General Provisions:**

2.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.

2.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.

2.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.

2.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.

2.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.

2.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.

2.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.

2.1.8 A geologist shall not use the provisions of 24 **Del.C.**, Ch. 36 or the Board's regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.

2.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge—especially when it is in the public interest.

2.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.

2.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.

2.1.12 A geologist shall not aid any person in the unauthorized practice of geology.

2.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.

### **2.2 Provisions Concerning Monetary Matters**

2.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/she performs work, must make full disclosure of the interest to all parties concerned with the project or property.

2.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

2.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;

2.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;

2.2.2.3 the fee customarily charged in the area for similar geological services;

2.2.2.4 the total value of the project and the results obtained;

2.2.2.5 the time limitations imposed by the client or by the circumstances;

- 2.2.2.6 the nature and length of the professional relationship with the client;
- 2.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and
- 2.2.2.8 whether the fee is fixed or contingent.
- 2.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.
- 2.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.
- 2.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:
- 2.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed;
- 2.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and
- 2.2.5.3 the total fee is reasonable.
- 2.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgement to ensure the collateral services are used prudently and economically.
- 2.3 Provisions Concerning The Relationship With The Client
- 2.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.
- 2.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.
- 2.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.
- 2.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.
- 2.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.
- 2.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.
- 2.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.
- 2.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.
- 2.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:
- 2.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;
- 2.3.9.2 when continued employment will result in a violation of 24 **Del.C.**, Ch. 36 or other illegality;
- 2.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.

2.3.10 A geologist shall not use or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician. A geologist shall also not abuse alcoholic beverages such that it impairs his/ her ability to perform his/her work

### **3.0 Stamp/Seal Requirements**

3.1 The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one-half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.

3.2 All reports, drawings, maps, or similar technical submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.

3.3 Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.

3.4 No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 **Del.C.** Ch. 36.

3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.

3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:

This submission is made in compliance with 24 **Del.C.**, Ch. 36 by (name) \_\_\_\_\_, P.G., DE license number \_\_\_\_ on this date \_\_\_\_\_.

### **4.0 Licensing Exemption**

4.1 Any person who claims exemption from the provisions of 24 **Del.C.** Ch. 36 under §3617(a), shall be entitled to such exemption so long as his/her remuneration from the practice of geology is solely related to a teaching function. If such remuneration is processed through his/her academic unit, it shall be considered prima facie evidence of the fact that such work is related to his/her teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his/ her name, include the statement:

"I hereby claim exemption from the requirements of 24 **Del.C.** Ch. 36 (Delaware Professional Geologist Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto."

Such a disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publications.

Any other geologic work, including consulting, not directly related to educational activities, shall not be considered exempt.

### **5.0 Issuance and Renewal of License**

5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **Del.C.** Ch. 36.

5.2 Renewal may be effected by:

5.2.1 filing a renewal ~~form~~ application prescribed by the Board and provided by the Division of Professional Regulation; Beginning in 2006, license renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).

5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;

5.2.3 ~~submission of evidence of continuing education on a form prescribed by the Board and provided by the Division of Professional Regulation as described in regulation five; attesting on the renewal application to the completing of continuing education as required by Rule 6.0.~~

5.2.4 payment of fees as determined by the Division of Professional Regulation.

5.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A geologist whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 5.2.1 - 5.2.4 above, certifying that he/she has not practiced geology in Delaware while his/her license has expired, and paying the renewal fee and a late fee which shall be 50% of the renewal fee.

5.4 No geologist will be permitted to renew his/her license once the one-year period has expired.

5.5 The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 **Del.C.** Ch. 36.

5.6 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.

## 6.0 Continuing Education

6.1 The Board will require continuing education as a condition of license renewal. Continuing education shall be waived for the first licensure renewal following the effective date of the Board's Rules and Regulations.

6.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.

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

6.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.

6.2 ~~[The continuing education period will be from August 1<sup>st</sup> to July 31<sup>st</sup> of each biennial licensing period. Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.]~~

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes ~~60 days prior to renewal~~. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.

6.6 ~~In his/her personal records, each licensee must keep proof of attendance for each activity listed on the CE log form.~~ for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will ~~request~~ require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the ~~form~~ CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.

6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.

6.8 Categories of Continuing Education and Maximum Credit Allowed:

6.8.1 Courses – 24 CEUs

6.8.2 Professional Meetings and Activities/Field Trips – 12 CEUs

6.8.3 Peer Review of (12 CEUs) or Peer Reviewed Geologic Publications (12 CEUs)

6.8.4 Presentations – 12 CEUs

6.8.5 Research/Grants – 12 CEUs

6.8.6 Specialty Certifications – 12 CEUs

- 6.8.7 Home Study Courses – 12 CEUs
- 6.8.8 Teaching – 12 CEUs
- 6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs
- 6.8.10 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.
- 6.9 Automatic Approval for course work sponsored by the following Professional Societies:
  - 6.9.1 American Association of Petroleum Geologists (AAPG)
  - 6.9.2 American Association of Stratigraphic Palynologists (AASP)
  - 6.9.3 American Geological Institute (AGI)
  - 6.9.4 American Geophysical Union (AGU)
  - 6.9.5 American Institute of Hydrology (AIH)
  - 6.9.6 American Institute of Professional Geologists (AIPG)
  - 6.9.7 Association of American State Geologists (AASG)
  - 6.9.8 Association of Earth Science Editors (AESE)
  - 6.9.9 Association of Engineering Geologists (AEG)
  - 6.9.10 Association of Ground Water Scientists and Engineers (AGWSE)
  - 6.9.11 Association of Women Geoscientists (AWG)
  - 6.9.12 Clay Mineral Society (CMS)
  - 6.9.13 Council for Undergraduate Research-Geology Div. (CUR)
  - 6.9.14 Geologic Society of America (GSA)
  - 6.9.15 Geoscience Information Society (GIS)
  - 6.9.16 International Association of Hydrogeologists/US National Committee (IAH)
  - 6.9.17 Mineralogical Society of America (MSA)
  - 6.9.18 National Association of Black Geologists and Geophysicists (NABGG)
  - 6.9.19 National Association of Geoscience Teachers (NAGT)
  - 6.9.20 National Association of State Boards of Geology (ASBOG)
  - 6.9.21 National Earth Science Teachers Association (NESTA)
  - 6.9.22 National Speleological Society (NSS)
  - 6.9.23 Paleontological Research Institution (PRI)
  - 6.9.24 Paleontological Society (PS)
  - 6.9.25 Seismological Society of America (SSA)
  - 6.9.26 Society of Economic Geologists (SEG)
  - 6.9.27 Society of Exploration Geophysicists (SEG)
  - 6.9.28 Society of Independent Professional Earth Scientists (SIPES)
  - 6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
  - 6.9.30 Society for Organic Petrology (TSOP)
  - 6.9.31 Society for Sedimentary Geology (SEPM)
  - 6.9.32 Society of Vertebrate Paleontology (SVP)
  - 6.9.33 Soil Science Society of America (SSSA)
  - 6.9.34 Other professional or educational organizations as approved periodically by the Board.
- 6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.

Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one Contact Hour.

**7 DE Reg. 1342 (4/1/04)**

**7.0 ASBOG Examination**

7.1 An applicant wishing to sit for any portion for the ASBOG examination required for a license as a Geologist shall make application in writing, on forms provided by the Board.

7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 Del.C. §3608(a)(1). To apply, the applicant

must fill out the request to sit for the fundamentals application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.

7.1.2 An applicant wishing to sit for the ASBOG Practice of Geology (PG) must have acquired 5 years of professional work experience as defined in Rule 1.0 and must submit a full application for licensure to the Board for review. Approval to sit for the PG will be dependant upon the applicant providing sufficient evidence, satisfactory, to the Board that he/she meets the qualifications for licensure set forth in 24 **Del.C.** §3608.

7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.

7.3 An applicant's approval to sit for either part of the ASBOG exam shall be valid for a period not to exceed two years.

**9 DE Reg. 456 (9/1/05)**

**8.0 Reciprocity**

8.1 Applicants applying for licensure by reciprocity must submit the state law and rules and regulations from at least one state in which they have been licensed. The Board will review these documents for substantial similarity to Delaware's state law and rules and regulations.

8.2 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.

**9.0 Crimes substantially related to the practice of geology:**

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

- 9.1.1 Abuse of a pregnant female in the first degree. 11 **Del.C.** §606.
- 9.1.2 Assault in the first degree. 11 **Del.C.** §613.
- 9.1.3 Assault by abuse or neglect. 11 **Del.C.** §615.
- 9.1.4 Murder by abuse or neglect in the first degree. 11 **Del.C.** §634.
- 9.1.5 Murder in the second degree. 11 **Del.C.** §635.
- 9.1.6 Murder in the first degree. 11 **Del.C.** §636.
- 9.1.7 Rape in the third degree. 11 **Del.C.** §771.
- 9.1.8 Rape in the second degree. 11 **Del.C.** §772.
- 9.1.9 Rape in the first degree. 11 **Del.C.** §773.
- 9.1.10 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 9.1.11 Dangerous crime against a child. 11 **Del.C.** §779.
- 9.1.12 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 9.1.13 Burglary in the first degree. 11 **Del.C.** §826.
- 9.1.14 Robbery in the first degree. 11 **Del.C.** §832.
- 9.1.15 Carjacking in the first degree. 11 **Del.C.** §836.
- 9.1.16 Identity theft. 11 **Del.C.** §854.
- 9.1.17 Forgery; felony. 11 **Del.C.** §861.
- 9.1.18 Possession of forgery devices. 11 **Del.C.** §862.
- 9.1.19 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 9.1.20 Offering a false instrument for filing. 11 **Del.C.** §877.
- 9.1.21 Issuing a false certificate. 11 **Del.C.** §878.
- 9.1.22 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 9.1.23 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 9.1.24 Criminal impersonation. 11 **Del.C.** §907.
- 9.1.25 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 9.1.26 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 9.1.27 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 9.1.28 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 9.1.29 Bribery. 11 **Del.C.** §1201.
- 9.1.30 Receiving a bribe. 11 **Del.C.** §1203.
- 9.1.31 Improper influence. 11 **Del.C.** §1207.

- 9.1.32 Official misconduct. 11 **Del.C.** §1211.
  - 9.1.33 Profiteering. 11 **Del.C.** §1212.
  - 9.1.34 Perjury in the second degree. 11 **Del.C.** §1222.
  - 9.1.35 Perjury in the first degree. 11 **Del.C.** §1223.
  - 9.1.36 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
  - 9.1.37 Bribing a witness. 11 **Del.C.** §1261.
  - 9.1.38 Bribe receiving by a witness. 11 **Del.C.** §1262.
  - 9.1.39 Tampering with a witness. 11 **Del.C.** §1263.
  - 9.1.40 Bribing a juror. 11 **Del.C.** §1264.
  - 9.1.41 Bribe receiving by a juror. 11 **Del.C.** §1265.
  - 9.1.42 Tampering with physical evidence. 11 **Del.C.** §1269.
  - 9.1.43 Escape after conviction; Class B felony. 11 **Del.C.** §1253.
  - 9.1.44 Assault in a detention facility; Class B felony. 11 **Del.C.** §1254.
  - 9.1.45 Hate Crimes; Class A or B felony. 11 **Del.C.** §1304.
  - 9.1.46 Adulteration; Class A felony. 11 **Del.C.** §1339.
  - 9.1.47 Possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447.
  - 9.1.48 Possession of a firearm during the commission of a felony. 11 **Del.C.** §1447A.
  - 9.1.49 Wearing body armor during the commission of a felony. 11 **Del.C.** §1449.
  - 9.1.50 Organized crime and racketeering. 11 **Del.C.** §1504.
  - 9.1.51 Victim or witness intimidation. 11 **Del.C.** §§3532 & 3533.
  - 9.1.52 Prohibited acts A [delivery/manufacture/possession with intent to deliver narcotics (death); Class B. 16 **Del.C.** §4751.
  - 9.1.53 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §47513A.
- 9.2 Crimes substantially related to the practice of geology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
- 8 DE Reg. 1105 (2/1/05)**

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**DIVISION OF PROFESSIONAL REGULATION**  
5300 State Board of Massage and Bodywork  
Statutory Authority: 24 **Del.C.** §5306(a)(1)  
24 **DE Admin. Code** 5300

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 17, 2006 at the regularly scheduled meeting of the Board of Massage and Bodywork to receive comments regarding proposed amendments to Regulations 1.0, 2.0, 4.0, 5.0, and 6.0. The proposed amendments all relate to CPR Certification and specify which certification will be acceptable to the Board. The proposed regulations were published in the *Register of Regulations*, Vol. 10, Issue 1, July 1, 2006.

**Summary of the Evidence and Information Submitted**

No written or verbal comments were received.

**Findings of Fact**

The Board finds that the specification of acceptable CPR Certifications effectuates the intent of the General Assembly and provides clarity and consistency to licensees.

## Decision and Effective Date

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following final publication of this order in the *Register of Regulations*.

## Text and Citation

The text of the Final Regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

**SO ORDERED** this 17<sup>th</sup> day of August, 2006.

### BOARD OF MESSAGE AND BODYWORK

Clayton Yocum, President  
David Patterson, Vice President  
Suzie Stehle  
Mary Jo Verdery  
Wade Carey

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 71(10 DE Reg. 71). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register*, page 71, or contact the Board of Massage and Bodywork for more information.

A complete set of the rules and regulations for the Board of Massage and Bodywork are available at:  
<http://www.state.de.us/research/AdminCode/title24/5300%20Board%20of%20Massage%20and%20Bodywork.shtml#TopOfPage>

## PUBLIC SERVICE COMMISSION

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

### ORDER

#### Electric Service Reliability and Quality Standards

IN THE MATTER OF THE CONSIDERATION OF  
RULES, STANDARDS AND INDICES TO ENSURE  
RELIABLE ELECTRICAL SERVICE BY ELECTRIC  
DISTRIBUTION COMPANIES  
(OPENED SEPTEMBER 26, 2000; REOPENED  
OCTOBER 11, 2005)

PSC REGULATION DOCKET NO. 50

### ORDER NO. 7002

**AND NOW**, to-wit, this 8<sup>th</sup> day of August, 2006;

**WHEREAS**, in 2003, the Commission originally adopted "Electric Service Reliability and Quality Standards" to provide interim benchmark standards related to the reliability of electric service provided by the two Commission-jurisdictional electric distribution utilities ("EDUs"); and

**WHEREAS**, in PSC Order No. 6745 (Oct. 11, 2005), the Commission proposed and then published (9 Del. Reg. 756-768 (Nov., 2005)) final "Electric Service Reliability and Quality Standards" to measure and govern the reliability of services provided by EDUs as well as to acquire information from in-State generation facilities; and

**WHEREAS**, several interested and affected entities voiced objections, or offered comments, concerning various provisions in the proposed final Standards and thereafter renewed those objections during the duly-noticed

public comment session hearing held by the designated Hearing Examiner; and

**WHEREAS**, after the public comment session, several of the entities filing comments and Staff entered into a settlement document that endorsed a revised form for the final Standards; and

**WHEREAS**, the designated Hearing Examiner held a duly-noticed hearing on the settlement document and the revised form of final Standards, and submitted a Report, dated May 10, 2006, that recommended that the Commission adopt the settling entities' form of final Standards as the Commission's form of final Standards, superseding the Standards previously proposed and noticed in November of 2005; and

**WHEREAS**, on June 20, 2006, by PSC Order No. 6925, the Commission found, for the reasons set forth in the Hearing Examiner's Report, that the settling entities' revised form of Standards is appropriate and will further the Commission's goal of ensuring reliable electrical services by jurisdictional EDUs; and

**WHEREAS**, the Commission (in an abundance of caution) determined that the revised form of Standards made "substantive" changes from the Standards proposed in November of 2005 and therefore directed Staff to publish the revised version of the proposed final Standards in the *Delaware Register* for further comment, as required by 29 **Del.C.** §10118(c) (see 10 Del. Reg. 74-87 & 199-200 (July 1, 2006)); and

**WHEREAS**, the Commission received no new comments relating to these proposed final Standards in response to this further notice; and

**WHEREAS**, the Commission held a duly-noticed public hearing on August 8, 2006, to consider final adoption of the Standards (as previously recommended by the Hearing Examiner) and no person or entity opposed adoption of the revised form of final Standards; and

**WHEREAS**, the Commission has the authority to adopt the final regulations under 26 **Del.C.** §§209, 1002, 1008, and 1019;

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

1. The Commission hereby adopts and incorporates by reference, in its entirety, its prior Order No. 6925 (June 20, 2006).

2. That the Commission hereby adopts and approves the proposed "Electric Service Reliability and Quality Standards" set forth as Exhibit "A" to this Order (being the same Standards that were approved and published pursuant to Order No. 6925). The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register*, the exact text of the final Standards attached hereto as Exhibit "A" for publication in the September 1, 2006 issue of the *Delaware Register of Regulations*.

3. The effective date of this Order shall be the later of September 10, 2006, or ten days after the date of publication in the *Delaware Register of Regulations*.

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

**BY ORDER OF THE COMMISSION:**

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

\* Please note that no changes were made to the regulation as originally proposed and published in the July 2006 issue of the *Register* at page 74 (10 DE Reg. 74). Therefore, the final regulation is not being republished. Please refer to the July 2006 issue of the *Register*, page 74, or contact the Public Service Commission for more information.

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**GOVERNOR'S EXECUTIVE ORDERS**

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER NUMBER EIGHTY-NINE**

**RE: Creating the Governor's Consortium on Hispanic Issues**

**WHEREAS**, the State of Delaware strives to meet the needs of all of its citizens; and

**WHEREAS**, there is a significant Hispanic population within the State that faces many unique challenges that are specific to this population; and

**WHEREAS**, despite multiple efforts, many of the needs of the Hispanic population in Delaware have not been adequately addressed; and

**WHEREAS**, the State recognizes the significant contributions of organizations dedicated to Hispanic issues, such as the Governor's Council on Hispanic Affairs, and realize that additional resources would be useful to the cause.

**NOW, THEREFORE, I, RUTH ANN MINNER**, by the virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Governor's Consortium on Hispanic Affairs (hereinafter "the Consortium") is hereby established.
2. All members of the Consortium shall be familiar with and knowledgeable of the unique issues and needs of the Hispanic community in Delaware including, but not limited to, issues relating to health and immigration.
3. The Consortium shall consist of eleven (11) members appointed by the Governor, and shall represent business, government, financial, educational and non-profit organizations. The non-profit organizations may include, but not be limited to, the Latin American Community Center, Laesperanza de Georgetown, LaRed, Westside Health Center and the Henrietta Johnson Medical Center.
4. The Chair of the Consortium shall be appointed by and serve at the pleasure of the Governor.
5. The duties and functions of the Consortium shall be:
  - (a) To support, enhance and supplement the work preformed by the Governor's Council on Hispanic Affairs;
  - (b) To review and study issues affecting the Hispanic community in Delaware;
  - (c) To prioritize the issues that face the Hispanic community in Delaware;
  - (d) To suggest and promote projects confronting the Hispanic community in Delaware;
  - (e) To seek funding from the Arsht-Cannon Fund at the Delaware Community Foundation, and other foundations and governmental entities for the purpose of addressing the identified issues; and
  - (f) To perform such other functions and duties as assigned to it by the Governor.
6. The Consortium shall be authorized to obtain expert advice and counsel to assist the Consortium in carrying out its duties and responsibilities
7. The Consortium shall annually report its progress to the Governor.

Approved and adopted: August 17, 2006

Ruth Ann Minner,  
Governor

**ATTEST:**

Harriet Smith Windsor, Secretary of State

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## DEPARTMENT OF FINANCE DIVISION OF REVENUE

### Technical Information Memorandum 2006-02

**DATE:** July 24, 2006

**SUBJECT:** Legislation passed during the First Session of the 143rd Delaware General Assembly.

During the Second Session of Delaware's 143rd General Assembly, ending June 30, 2006, fourteen (14) bills were enacted of interest to or having an impact on Delaware taxpayers and the state's Division of Revenue. The subjects of these bills range from decrease the rate of interest assessed on tax (HB397) to the initiation of a cybershame website for tax evaders (HB118).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease:

- (I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and
- (II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no affect on tax-filing requirements for the upcoming year. Bills in their entirety may be viewed online through the Delaware General Assembly website: <http://www.legis.state.de.us>.

This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the Delaware Code, or Delaware regulations in all matters conflicting with any part of this memorandum.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at [<http://www.state.de.us/revenue>] where information about tax topics and links to phone numbers for other information may be found.

**(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:**

**House Bill No. 381 w/HA 1 & SA 1**

Signed by Governor on 06/01/2006

It is the purpose of this legislation to define sports officials of non-professional games and events as independent contractors for purposes of workers compensation.

Any person providing services as a sports official at a sports event in which the players are not compensated shall not be considered employees under this Title. For purposes of this Title 'sports officials' includes an umpire, referee, judge, scorekeeper, timekeeper, organizer, or other person who is a neutral participant in a sports event. This exclusion does not apply to workers' compensation claims against schools, associations of schools or other organizations sponsoring a sports contest where the claimant is a sports official who is a regular employee of such school, association of schools, or other organization sponsoring the sports contest.

**House Bill No. 382 w/SA 1**

Signed by Governor on 06/27/2006

This Act establishes an exemption from business license and gross receipts taxes for individuals providing instructional services to the Delaware State Fire School on a contractual basis.

**House Bill No. 398**

Signed by Governor on 07/10/2006

This Bill will conform Delaware law to amendments of the Internal Revenue Code made in response to rulings by the World Trade Organization, which effectively eliminated Foreign Sales Corporations and Delaware's own export trading companies.

**House Bill No. 455 w/SA 2, SA 4**

Signed by Governor on 06/30/2006

This Act authorizes the Department of Natural Resources and Environmental Control to develop regulations governing management of scrap tire piles and establishes a matching fund and program, the Scrap Tire Management Fund, to accomplish the cleanup of existing scrap tire piles.

The Act creates an additional license registration requirement, at no additional cost, for every person engaged in the business of selling tires for vehicles other than farm tractors and off highway vehicles. As a funding source, such businesses must pay a fee of \$2 for each tire sold. The fee is due monthly to the Division of Revenue, on or before the 20th day of the month for tires sold the proceeding month, and will be deposited into the Scrap Tire Management Fund. Each retailer of tires may list the amount of the tire fee as separate line item on an invoice to their customer.

Every person engaged in the business of selling tires at retail must obtain a General Retail Business license and Retail Tire License for each location at which it sells tires. In addition, any person who provides services and sells tires that are incidental to providing services, instead of obtaining a General Retail Business License may include the sales of tires with their service receipts on their gross receipts tax coupon, must also obtain a Retail Tire License and pay the \$2.00 per tire fee.

**(II) Legislation implementing broad policy changes or altering Division of Revenue processes with little to no affect on tax-filing requirements for the upcoming year:****HS 1 FOR HB 118**

Signed by Governor on 07/10/2006

This Act requires the Secretary of Finance to prepare, maintain and publish on the Division of Revenue's Internet Website two (2) lists of 100 taxpayers owing outstanding tax liabilities. One (1) list would consist of delinquent personal income taxpayers, the other would be devoted to delinquent business taxpayers. Each list will be limited to the taxpayers having the largest outstanding balances.

Taxpayers will not be included on the list until (i) their tax liability has been reduced to judgment, i.e., they have exhausted all their rights to administrative and judicial review, and (ii) they have been notified by certified mail at least sixty (60) days prior to the date of publication of the Secretary's intent to publish their name.

Taxpayers who have (i) filed for bankruptcy protection, (ii) entered into and complied with the terms of an installment plan, (iii) a total outstanding liability of less than \$1,000, or (iv) a liability that resulted from extraordinary circumstances will be excluded from the published list.

Taxpayers shall be removed from the published list within thirty (30) days of receiving full payment or written agreement to enter a payment plan. If, however, the taxpayer issues a bad check to the Division or fails to meet the terms of a payment agreement, the taxpayer may be immediately returned to the published list.

**House Bill No. 330 w/HA 2**

Signed by Governor on 01/26/06

This Bill is designed to close the "merger" loophole established in a recent judicial decision. Merger transactions and all kinds of indirect dealings in intangible property that are properly characterized as a sale of real property under §5401(7) are intended to be taxed under the Realty Transfer Tax.

**House Bill No. 397**

Signed by Governor on 07/10/2006

This act amends Title 30 of the Delaware Code relating to assessments of interest and penalty.

Section 1 of this Bill will decrease the rate of interest assessed on tax and additions to tax not paid by the last day prescribed for payment.

Section 2 of this Bill will decrease the rate of interest assessed on the recovery of erroneous refunds.

Section 3 and 5 of this Bill will increase the rate of penalty assessed in the case of failure to pay the amount shown as tax due on any return, or in the case of failure to pay any amount in respect of any tax required to be shown on a return before the date prescribed for payment.

Section 4 of this Bill will decrease the rate of interest paid on overpayments of tax.

Section 6 of this Bill makes the change to penalty and interest effective for tax periods beginning on or after January 1, 2007. For tax filings received after this date, but for which the tax period began before January 1, 2007, the effective penalty and interest rates will be the same as prior to the effective date of this bill. The change to penalty and interest for unpaid tax liabilities will be effective on January 1, 2007 or 30 days after the first billing of a tax return filed on or after January 1, 2007 for tax periods beginning before January 1, 2007.

**Senate Bill No. 277**

Signed by Governor on 07/10/2006

This Bill authorizes the Director of Revenue to remind taxpayers, who filed their personal income tax returns using 2-D bar code technology or other nontraditional tax preparation medium, of their filing obligation by post card instead of by mailing a complete package of tax forms and instructions.

**Senate Bill No. 278**

Signed by Governor on 07/20/2006

This Act makes uniform the language regarding the location of special fund contribution items on the personal income tax return thereby clarifying the Director of Revenue's authority to ensure that all special contribution items are treated equitably.

**Senate Bill No. 400 §33**

Signed by Governor on 07/01/2006

This act makes appropriations for certain grants-in-aid for the fiscal year ending June 30, 2007; it specifies certain procedures, conditions and limitations for the expenditure of such funds, amends the fiscal year 2007 Appropriations Act, and amends certain pertinent statutory provisions.

Patrick Carter, Director of Revenue

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION  
NOTICE OF PUBLIC HEARING**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change DHRC Rules 2 and 8. The Commission will hold a public hearing on the proposed rule changes on September 26, 2006. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

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**NUTRIENT MANAGEMENT  
NOTICE OF PUBLIC HEARING**

**Nutrient Management Certification Regulation Amendments (Exhibit A):** Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 **Del.C.** §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. The proposed changes to the certification regulations establish nutrient handling requirements for certain nutrient handlers. The proposed regulation addresses application timing and placement for commercial inorganic fertilizer and organic fertilizer

**Mandate Amendment (Exhibit B):** The proposed regulation requires nutrient handlers and animal operations to develop and implement nutrient management practices as required by the Nutrient Management Law (3 **Del.C.** §2201 et. al.) by January 1, 2007.

Comments on the proposed changes will be accepted from September 1, 2006 until September 30, 2006. Any comments should be provided to the Nutrient Management Program office located at 2320 S. Dupont Hwy., Dover, DE 19901, ATTN: William Rohrer. Hearings for the proposed regulations will be conducted at the Delaware Department of Agriculture on September 26, 2006 at 6:00 PM and at the Gumboro Fire Company hall on September 28, 2006 at 6:00 PM. A meeting to accept the proposed changes was held at the Nutrient Management Full Commission meeting on August 8, 2006 at 7:00 PM. The accepted changes are indicated below.

**Amendments:** Paragraphs 6.0 – 14.0, reference 1200 Nutrient Management, 1201 Nutrient Management Certification Regulations.; Paragraph 4.0, reference Nutrient Management, 1203 Mandatory Nutrient Management Plan Reporting Implementation Regulations.

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**PESTICIDES SECTION  
NOTICE OF RESCHEDULED PUBLIC HEARING**

The State of Delaware, Department of Agriculture, will hold a public hearing on October 5, 2006, 6 p.m., in Conference Room 1, Delaware Department of Agriculture building, 2320 S. Dupont Hwy., Dover, DE.

The hearing is being held for the purpose of receiving information, factual evidence, and public reaction as it relates to proposed amendments to the Pesticide Regulations under Title 3, **Delaware Code**, Chapter 12, Pesticide Law. The hearing will be conducted in accordance with Title 29, Chapter 101, Administrative Procedures Act.

Beginning at 6 p.m. comments will be received relating to: additional commercial pesticide application record keeping requirements, increased commercial applicator certification fees, and modifications to the pesticide storage and containment rules.

Title 3, **Delaware Code**, Section 1237, provides the Department with the authority to issue regulations pursuant to this statute.

Interested parties may obtain a copy of the proposed amendments by calling the Department at 1-800-282-8685; by writing the Delaware Department of Agriculture, Pesticides Section, 2320 S. Dupont Hwy., Dover, DE 19901; or, by visiting the *Register of Regulations* site <http://regulations.delaware.gov/>.

**DEPARTMENT OF EDUCATION**

The Department of Education will hold its monthly meeting on Thursday, September 21, 2006 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****NOTICE OF PUBLIC COMMENT PERIOD****Title XXI Delaware Healthy Children State Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42CFR §447.205, and, under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual related to the Delaware Prescription Assistance Program (DPAP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by October 2, 2006.

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

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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****NOTICE OF PUBLIC COMMENT PERIOD****3000 Delaware Prescription Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and with 42CFR §447.205, and, under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual related to the Delaware Prescription Assistance Program (DPAP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by October 2, 2006.

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

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**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**  
**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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4454 by October 2, 2006.

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

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**DEPARTMENT OF LABOR**  
**DIVISION OF INDUSTRIAL AFFAIRS**  
**NOTICE OF PUBLIC HEARING**

The Governor's Council on Apprenticeship and Training in accordance with 19 **Del.C.** §202(a) has proposed changes to the rules and regulations relating to apprenticeship and training. The proposal modifies the number of classes a registered Apprentice can miss while enrolled in a related studies program at any of the vocational schools in the three (3) counties of the State of Delaware before being dropped from that school. Being dropped from the school will result in the Apprentice's Apprenticeship Agreement being terminated by their Sponsor and/or State Registration Agency.

A public hearing will be held before the Council on Apprenticeship and Training ("Council") at 1:00 p.m. on October 5, 2006, at the Delaware Department of Labor, Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rule may obtain a copy from Kevin Calio, Manager, Apprenticeship and Training, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19808-0828. Persons wishing to submit written comments may forward these to the Council at the above address. The final date to receive written comments will be at the public hearing.

The Council will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR AND WASTE MANAGEMENT**  
**1141 Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products**  
**NOTICE OF PUBLIC HEARINGS**

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

DNREC is proposing to amend Regulation No. 41 to include a manufacturer's record retention period, and to modify the definition of a specialty primer, sealer, undercoater product to include sealing in efflorescence. At the same time, typographical errors will be corrected and the entire regulation renumbered consistent with the style manual of the **Code of Delaware Regulations**.

The public comment period for this proposed amendment will extend through at least October 2, 2006. Interested parties may submit comments in writing during this time frame to: Gene M. Pettingill, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Monday October 2, 2006, beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

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**DIVISION OF AIR AND WASTE MANAGEMENT**  
**1146 Electric Generating Unit (EGU) Multi-Pollutant Regulations and Section 111 (d)**  
**NOTICE OF PUBLIC HEARINGS**

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

The proposed Regulation No. 1146 establishes Nitrogen Oxides (NOx), Sulfur Dioxide (SO<sub>2</sub>), and mercury

emissions limits to achieve reductions of those pollutants from Delaware's large electric generation units. The reduction in NOX, SO<sub>2</sub>, and mercury emissions will: 1) reduce the impact of those emissions on public health; 2) aid in Delaware's attainment of the State and National Ambient Air Quality Standard (NAAQS) for ground level ozone and fine particulate matter; 3) help address local scale fine particulate and mercury problems attributable to coal and residual oil-fired electric generating units, 4) satisfy Delaware's obligations under the Clean Air Mercury Rule (CAMR), and 5) improve visibility and help satisfy Delaware's EGU-related regional haze obligations. Once finalized Regulation No. 1146 will be submitted to the EPA for approval into Delaware's ozone and fine particulate matter State Implementation Plans (SIPs).

The proposed Section 111(d) State Plan for the Control of Mercury Emissions from Coal-fired Electric Steam Generating Units satisfies the U.S. Environmental Protection Agency (EPA) Clean Air Mercury Rule (CAMR) requirements for Delaware. The main component of this plan is the mercury portion of Delaware's Air Regulation No. 46, Electric Generating Unit (EGU) Multi-Pollutant Regulation. Regulation No. 46 does not provide for participation in the EPA-managed cap-and-trade program, but instead establishes a program that is designed to achieve emission reductions and cap overall mercury emissions from EGUs within our borders in a shorter timeframe. Once finalized the 111(d) plan will be submitted to the EPA for approval.

The public comment period for this proposed amendment will extend through at least October 2, 2006. Interested parties may submit comments in writing during this time frame to: Bob Clausen, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on the following dates, times and locations:

September 25, 2006 6:00 p.m.	DNREC Auditorium 89 Kings Highway Dover, DE 19901
September 27, 2006 6:00 p.m.	DNREC Lukens Drive Office 391 Lukens Drive New Castle, DE 19720
September 28, 2006 6:00 p.m.	Del Tech - Owens Campus Rt. 18 & Seashore Hwy Georgetown, DE 19947

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**DIVISION OF AIR AND WASTE MANAGEMENT****Clean Air Act Section 111(d) State Plan for the Control of Mercury Emissions from Coal-fired Electric Steam Generating Units (EGUs)  
NOTICE OF PUBLIC HEARINGS****Background/Introduction**

On May 18, 2005, the U.S. Environmental Protection Agency (EPA) finalized the Clean Air Mercury Rule (CAMR) to establish standards of performance for mercury emissions from new and existing coal-fired electric steam generating units (EGUs), as defined in Section 111 of the federal Clean Air Act (CAA). See 70 FR 28606, which is attached hereto as Appendix A.

Under CAMR, each State receives an annual budget for mercury emissions from coal-fired EGUs with a nameplate capacity larger than 25 megawatts. A State can meet its CAMR budget either by joining the EPA managed cap-and-trade program or by demonstrating that the State annual EGU mercury budgets codified in 40 CFR §60.24(h)(3) will not be exceeded in any year. The State of Delaware's mercury budget for the period January 1, 2010 through 2017 is 0.072 tons, and its budget for 2018 and thereafter is 0.028 tons.

By November 17, 2006, states must submit a plan to the EPA that meets the requirements of the CAMR. If a state fails to submit a state plan, then the EPA will prescribe a Federal plan for that state under Section 111(d)(2)(A) of the CAA. See 70 Fed. Reg. 28649 (May 18, 2005) and 40 CFR 60.24 (h)(2). The EPA would propose the model rule (i.e., 40 CFR Part 60 Subpart HHHH) under the CAMR as that Federal plan.

In Delaware two (2) facilities with six (6) existing EGUs are subject to the requirements of 60.24(h). Consequently, the Department must develop this State Plan to implement and enforce the Section 111(d) requirements to control mercury emissions from these EGUs.

The main component of this plan is the mercury portion of Delaware's Air Regulation No. 1146, Electric

Generating Unit (EGU) Multi-Pollutant Regulation. Regulation No. 1146 does not provide for participation in the EPA-managed cap-and-trade program, but instead establishes a program that is designed to achieve emission reductions and cap overall mercury emissions from EGUs within Delaware. Delaware's proposed Regulation No. 1146 establishes both mercury emission rate limitations and mercury emission mass limitations. The mercury mass emissions limitations, expressed in tons per year, are those that will satisfy CAMR requirements. Both the emission rate and emission mass requirements require compliance on a unit-by-unit basis, and do not allow trading or facility-wide emissions averaging.

Delaware is not adopting the federal mercury budget trading program under 40 CFR Part 60 Subpart HHHH. This means that both existing and new (i.e., construction after January 30, 2004) coal fired EGUs are subject to this plan. A new unit set aside has been established to provide for new unit construction - a 5% set aside for Phase I is 0.0036 ton/yr (7.2 lb/yr) and the 3% set aside for Phase II is 0.0008 ton/yr (1.7 lb/yr). Any need beyond this will be addressed by revision to both Regulation No. 1146 and this plan to ensure annual mass emission from coal fired EGUs greater than 25 MW in size in Delaware will not exceed the annual mercury budget established under 40 CFR §60.24(h)(3).

DNREC intends to finalize and submit to the EPA for approval both Regulation No. 1146 and this plan no later than November 17, 2006.

Prior to submitting this Section 111(d) State Plan to EPA for approval, the DNREC will hold three public hearings for the purpose of accepting testimony on this proposed State Plan for controlling mercury emissions from all Coal-fired Electric Steam Generating Units in the State. Because of the integral relationship, these public hearings will coincide with the public hearings on the adoption of Regulation No. 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation. The public hearings will be held on the following dates, times and locations:

**Note: See schedule for Regulation 1146, above, for public hearing dates, times and locations.**

As required under 40 CFR §60.23, DNREC will publish notice of the date, time and location of the hearings at least 30 days prior to the scheduled date of the hearing. The Notice of Public Hearings and opportunity to provide written comments will be published in both the Delaware Register of Regulations and in newspapers of general circulation in the state. In addition, EPA, and states in the interstate region whose air quality may be affected by emissions from Delaware's EGUs will receive notice of the date, time and location of each hearing. The notice will also specify that copies of the proposed Section 111(d) State Plan are available for review in the Departments Dover and New Castle offices.

Persons interested in providing testimony on the proposed Section 111(d) State Plan are encouraged to contact Bob Clausen at (302) 739-9402 prior to the hearing.

Persons interested in submitting written comments on the proposed State plan should send the comments to Bob Clausen, State of Delaware, DNREC, Division of Air and Waste Management, 156 S. State Street, Dover, DE 19901. Written comments will be accepted until October 1, 2006, or any longer time as specified by the Hearing Officer at the public hearings. Copies of the proposed adopted State Plan for EGUs may be obtained from Bob Clausen at the above address or by telephone at (302) 739-9402 (e-mail robert.clausen@state.de.us). This proposed State Plan is also available on the DNREC Web site at [www.awm.delaware.gov/Info/Regs/AQMMultiPReg.htm](http://www.awm.delaware.gov/Info/Regs/AQMMultiPReg.htm).

In accordance with 40 CFR §60.23(f), DNREC will certify that the public hearings were held in accordance with the criteria specified in 40 CFR §60.23(d), and will provide a list of witnesses and their organizational affiliations, if any, appearing at the hearing and a brief written summary of each presentation or written submission. The public hearing certification is attached hereto as Appendix B (Documentation of public participation process).

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**DIVISION OF FISH AND WILDLIFE**

**3200 Horseshoe Crabs (Option 1: 3203, 3207, 3210, 3211 and 3214; Option 2: 3215)**

**NOTICE OF PUBLIC HEARINGS**

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

The Department is proposing two options, either of which would meet the compliance requirements of Addendum IV to the Interstate Fishery Management Plan for Horseshoe Crabs which is administered by the Atlantic States Marine Fisheries Commission (ASMFC).

**Option 1** would prohibit the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7 for two years, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the

year as well. During the period June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. Commercial collectors of horseshoe crabs will have to report their landings daily during the open season in order to facilitate quota monitoring. Permit renewal requirements will be aligned with other shellfish licenses. Specifically, horseshoe crab commercial beach collecting permits must be renewed annually by December 31 of each calendar year or the person holding the collecting permit forfeits their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years. This option permits harvest to resume after the period of time that the shorebirds normally have migrated north of Delaware that depend on horseshoe crab eggs as a food source, and after a significant portion of the horseshoe crab spawning has occurred in a normal year. By harvesting only male horseshoe crabs, females would be further protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year.

**Option 2** would prohibit all harvest and landing of horseshoe crabs in Delaware for a period of two years to begin in calendar year 2007. This option is more restrictive than required in Addendum IV, but individual states may be more restrictive, but not less restrictive than that called for in approved plans administered by the ASMFC. This option would end all horseshoe crab harvest in Delaware for a two-year period.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302)739-3441 or by e-mail to [roy.miller@state.de.us](mailto:roy.miller@state.de.us). A public hearing on these two proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:30 PM on September 28, 2006. Written comments for the hearing record should be addressed to Roy Miller, Hearing Officer, at the above address or via e-mail to [roy.miller@state.de.us](mailto:roy.miller@state.de.us) and will be accepted until 4:30 PM October 3, 2006.

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**DIVISION OF FISH AND WILDLIFE  
3700 Shellfish Regulations (3711, 3712 and 3755)  
NOTICE OF PUBLIC HEARINGS**

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

To raise the minimum size of knobbed whelks (knobbed conchs) that may be harvested from five inches to six inches in one-quarter inch increments over a four-year period. This will result in increased conservation of spawning stock biomass for a resource that is showing signs of over-exploitation. More conchs will have reached maturity prior to being subject to harvest with the increase in the minimum size limit. This will likely depress landings until the conchs previously subject to harvest have grown from five inches to the newly proposed legal size of six inches. The Department estimates it will take 3-4 years for a five-inch conch to reach 6 inches.

To cap the number of conch dredge licenses that the Department may issue to the number issued during the period 2003-2005. This cap will be maintained for a five-year period. This will prevent a potential doubling of fishing effort that could occur (based on the number of license applicants) if the number of available licenses were not capped and will help limit increases in mortality caused by fishing which the Department has determined is already excessive for the long-term health of this resource. Those license applicants who have been on the five-year waiting list will be unable to obtain a conch dredge license for a minimum of five additional years under this proposed regulation.

The rectangular escape vent in the parlor of lobster pots would be increased from the present 1 15/16ths inches by 5 3/4 inches to 2 inches by 5 3/4 inches. If a circular vent is used, it is proposed that the minimum inside diameter be 2 5/8ths inches. These vent dimensions would be consistent with federal requirements for lobster pots set in federal waters in our area. The overwhelming majority of Delaware's lobster landings are from federal waters and the proposed increase in vent size is considered to be the appropriate escape vent dimensions with the minimum lobster size limits (3 3/8s inch carapace length) now in effect in Delaware and federal waters offshore of Delaware.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302)739-3441 or by e-mail to [roy.miller@state.de.us](mailto:roy.miller@state.de.us). A public hearing on these two proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:30 PM on October 17. Written comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901, or by e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) and will be accepted until 4:30 PM October 20, 2006.

**DIVISION OF WATER RESOURCES****Notice of Availability of the Total Maximum Daily Load (TMDL), Informational Meeting for Delaware Bay  
NOTICE OF PUBLIC HEARINGS****Brief Synopsis of the Subject, Substance and Issues:**

The United States Environmental Protection Agency (USEPA) proposes to establish a total maximum daily load (TMDL) for polychlorinated biphenyls (PCBs) from the head of the Delaware Bay at Liston Point to the mouth of the Bay at Cape Henlopen to Cape May. This area is also referred to as Delaware River Basin Commission Water Quality Management Zone 6. Technical development and interstate coordination necessary to support TMDLs for PCBs in the Delaware River has been provided by the Delaware River Basin Commission (DRBC). Adoption of the TMDL will implement the requirements of the USEPA's Water Quality and Management Planning regulations (40 CFR 130) to establish TMDLs.

This notice announces the date of availability for comment on the basis and background document explaining the background and calculations for the TMDL for polychlorinated biphenyls (PCBs) in Delaware River Basin Commission Water Quality Management Zone 6. This notice also announces the informational meeting to be held in Delaware on the proposed adoption of the TMDL by the U.S. EPA, conducted jointly with the Delaware Department of Natural Resources and Environmental Control (DNREC), the New Jersey Department of Environmental Protection (NJDEP), and the Delaware River Basin Commission (DRBC).

A draft report, including the basis and background document for the TMDL and calculations for the TMDL, will be published on the DRBC web site, <http://www.drbc.net>, on or before September 5, 2006.

The date and location of the informational meeting in Delaware is: Tuesday, September 26, 2006 beginning at 6:00 p.m. in the Auditorium of the Delaware Department of Natural Resources and Environmental Control's Offices on 89 Kings Highway in Dover, DE. The informational meeting will begin with a presentation by representatives of DNREC, USEPA, and the DRBC. The presentation will be followed by a question and answer session that will not be conducted as part of the record. An additional meeting will be held, intended for interested parties in New Jersey. The date and location of the Public Hearing in New Jersey is: Thursday, October 5, 2006 beginning at 1:00 p.m. at the Millville Municipal Building City Hall 4<sup>th</sup> Floor Commission Chambers, 12 South High Street, Millville, New Jersey the hearing will close at the end of testimony.

Written comments will be accepted through October 20, 2006 and should be submitted electronically to [berlin.lenka@epamail.epa.gov](mailto:berlin.lenka@epamail.epa.gov) or by mail to Lenka Berlin, Office of Watersheds (3WP30), USEPA, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. EPA will review all data and information submitted during the comment period and will revise the TMDLs as appropriate. A written response document will be prepared prior to final EPA action. For further information contact: Pete Gold, EPA Region 3, at 215-814-5236.

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**DIVISION OF WATER RESOURCES**

**Proposed Total Maximum Daily Loads (TMDLs) for Bacteria for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds, Delaware**

**NOTICE OF PUBLIC HEARINGS****Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct Public Hearings regarding Total Maximum Daily Load (TMDL) Regulations for bacteria for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds. A TMDL sets a limit on the amount of a pollutant that

can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

The proposed Bacteria TMDL Regulations for the Chester River, Choptank River, Marshyhope Creek, and Pocomoke River Watersheds are necessary because the existing TMDL regulations that included both nutrient and bacteria allocations, promulgated on January 11, 2006, are being revised to include nutrients only. This change is necessary due to a clarification in the interpretation of the EPA-required bacteria water quality standards that result in changes to the bacteria allocations.

Draft TMDL Regulations for these watersheds were published in the June 1, 2006 issue of the Delaware Register of Regulations and were reviewed during public workshops held in June, 2006. All comments received at the workshops and during the June 1 through 30 comment period were considered by the Department. Comments, as well as additional technical analyses, resulted in minor changes to the proposed TMDL Regulations and enhancements to the technical support documents. The revised proposed TMDL Regulations are published, following this notice, in this issue of the Register.

The Public Hearing for the Murderkill River and Appoquinimink River Watersheds will be held Wednesday, September 20, 2006 at 6:00 p.m. in the DNREC Secretary's Conference Room, Richardson and Robbins Building, 89 Kings Highway, Dover.

The Public Hearing for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman, Assawoman, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) will be held Thursday, September 21, 2006 at 6:00 p.m. at the University of Delaware Research and Education Center, 16483 County Seat Highway, Georgetown, DE.

The hearing records for these watersheds will remain open until 4:30 p.m., Monday, October 2, 2006. Please send written comments to Sam Myoda, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464; facsimile: (302) 739-6140, email: (samuel.myoda@state.de.us). All written comments must be received by 4:30 p.m., Monday, October 2, 2006. Electronic submission is preferred.

Copies of the proposed regulations and TMDL reports and technical support documents for these watersheds are available by mail from Sam Myoda, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, or from the Internet at the following URL: <http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm>

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3100 Delaware Board of Funeral Services**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Funeral Services in accordance with 24 **Del.C.** §3105(a)(1) has proposed changes to Regulation 9.0 to address licensee's access to online renewal of licenses and online attestation of completion of continuing education courses, and set forth procedures for audit and verification of completed continuing education. In addition, the proposed changes revise the rules to give the Board the ability to determine the appropriate action with respect to licensees who fail to comply with the continuing education requirements as of the time of renewal. Finally, the proposed changes eliminate the Continuing Education Committee of the Board and clarify that the Board will not review requests for approval of continuing education credits from programs that are automatically approved by the Board.

A public hearing will be held on October 25, 2006 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will

be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION  
3300 Board of Veterinary Medicine  
NOTICE OF PUBLIC HEARING**

The Delaware Board of Veterinary Medicine will hold a hearing pursuant to 24 **Del.C.** §3306(a)(1) and 29 **Del.C.** §101 on Tuesday, October 10, 2006, at 1:00 P.M. in Conference Room A, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware Division of Professional Regulation Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904.

Persons may present their views in writing by mailing their views to the Board at the above address prior to the hearing, and the Board will consider those responses received before 10:a.m. on September 29, 2006, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes.

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**DEPARTMENT OF TRANSPORTATION  
DIVISION OF MOTOR VEHICLES  
Motor Fuel Tax Administration  
2900 Regulations for the Office of Retail Gasoline Sales**

**PUBLIC COMMENT PERIOD AND NOTICE OF PUBLIC HEARING**

Under Title 6 of the **Delaware Code**, Section 2912, certain entities that distribute Motor Fuels through Delaware retail service stations are required to provide pump assistance to motorists who cannot pump their own fuel. Section 2912.1 places this requirement on Retail Dealers that offer both Full-Service and Self-Service. Section 2912.2 places this requirement on stations that provide self-service, unless the location is operating on a remote control basis with only one employee, or someone able to provide refueling assistance is in the vehicle. Regulation 2912.1 currently requires Full/Self Service Retail Stations to conspicuously post a sign describing the pump service requirements. There is not a similar sign requirement for affected Self-Service Retail Stations. The purpose of this proposed change is to place the sign-posting requirement on Self-Service retail stations as well.

The Department will take written comments on the draft regulatory changes from September 15, 2006 through October 13, 2006. The Motor Fuel Tax Administration will hold a public hearing on the proposed rule change on October 16, 2006. Any requests for copies of the Office of Retail Gasoline Sales Law and Regulations, or any questions or comments regarding this document should be directed to:

Michael J. Harrell, Motor Fuel Tax Administrator  
Division of Motor Vehicles, Motor Fuel Tax Administration  
Delaware Department of Transportation  
PO Box 778  
Dover, DE 19903  
(302) 744-2715 (telephone)  
(302) 739-6299 (fax)  
[Michael.harrell@state.de.us](mailto:Michael.harrell@state.de.us)